

FRANCHISE AND CONCESSION REVIEW COMMITTEE

August 9, 2017

(Cal. No. 1)

RESOLVED, that the Franchise and Concession Review Committee ("FCRC") authorizes NYC & Company, Inc., on behalf of the New York City Department of Small Business Services ("SBS") to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, for SBS to enter into a non-exclusive, Sole Source License Agreement ("License Agreement") with Fire Replicas, LLC ("Fire Replicas") for the non-exclusive use of city-owned trademarks on merchandise. The License Agreement will provide for a license term beginning on October 1, 2016 and shall continue through July 15, 2020 with an option for the City to renew the License Agreement on substantially the same terms and conditions, in its sole discretion, for two (2) years. For each license year of the initial term, Fire Replicas shall pay royalties equal to five (5%) of Net Sales (as defined in the License Agreement). The License Agreement provides for a guaranteed minimum royalty of fifteen thousand dollars (\$15,000) covering the period from October 1, 2017 to July 15, 2020.

THIS IS A TRUE COPY OF THE RESOLUTION ADOPTED BY THE
FRANCHISE AND CONCESSION REVIEW COMMITTEE ON

August 9th, 2017

Date: _____

Signed: _____

Title: Director of the Mayor's Office of Contract Services

CONCESSION AGREEMENT RECOMMENDATION FOR AWARD MEMORANDUM COVER SHEET

(Attach, in the following order, applicable CRFA Memo, Responsibility Determination Form, approved CPSR Cover Sheet and, if the selection procedure was not CSB, the CPSR Memo and CCPO Memo (if applicable))

AGENCY: NYC & Company, Inc. on behalf of NYC Department of Small Business Services	RECOMMENDED CONCESSIONAIRE Name: Fire Replicas, LLC Address: P.O. Box 301, Cleveland, WI 53015 Telephone # 920-395-9042 <input checked="" type="checkbox"/> EIN <input type="checkbox"/> SSN #47-2702814 Not-for-Profit Organization <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Certified by DSBS as M/WBE <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	CONCESSION TITLE/ DESCRIPTION: Non-exclusive use of City-Owned Trademarks on Merchandise CONCESSION I.D.# NYCCO-2017-009
# VOTES required for proposed action = 4 <input type="checkbox"/> N/A		

LOCATION OF CONCESSION SITE(S*) Address _____ ☒ N/A
 *Attach additional sheet **Borough** _____ **C.B.** _____ **Block #** _____ **Lot #** _____

SELECTION PROCEDURE (*CCPO approval of CRFA required)

- ☐ Competitive Sealed Bids
☐ Competitive Sealed Proposals* (☐ FCRC approved Agency request to deviate from final recommendation of the Selection Committee on __/__/__)
☒ Different Selection Procedure: * (☒ Sole Source Agreement ☐ Other _____)
 > FCRC approved different selection procedure on 6/14/17.
☐ Negotiated Concession*

CONCESSION AGREEMENT TERM

Initial Term: From 10/1/16 To 7/15/20
Renewal Option(s) Term: From 7/16/20 To 7/15/22
 From __/__/__ To __/__/__
Total Potential Term: 5 Years and 9 months
☐ * >20 years – FCRC unanimously approved term on __/__/__

ANNUAL REVENUE

(Check all that apply)
☐ Additional sheet (☐s) attached

- ☐ Annual Fee(s) \$ _____
☐ % Gross Receipts _____%
☐ The Greater of Annual Minimum Fee(s of \$_____ v. _____% of Gross Receipts
☒ **Other** For each license year of the initial term, Fire Replicas, LLC shall pay royalties equal to five percent (5%) of Net Sales.

Guaranteed Minimum Royalty payment shall be payable as follows:

A guaranteed minimum royalty of fifteen thousand dollars (\$15,000) for the period October 1, 2017 to July 15, 2020.

NOTIFICATION REQUIREMENTS

Subject concession was awarded by CSB or CSP.

☐ YES ☒ NO

If YES, check the applicable box(es) below:

- ☐ The subject concession is a Significant Concession and the Agency completed its consultations with each affected CB/BP regarding the scope of the solicitation by __/__/__, which was at least 30 days prior to its issuance.
☐ The subject concession is a Significant Concession and the Agency included this concession in the Agency's Plan and completed consultations with each affected CB/BP pursuant to §1-10 of the Concession Rules.
☐ The subject concession was determined not to be a Major Concession and the Agency sent notification of such determination to each affected CB/BP by __/__/__, which was at least 40 days prior to issuance of the solicitation.

If NO, check the applicable box below:

- ☒ The Agency certifies that each affected CB/BP received written notice by 5/5/17, which was at least 40 days in advance of the FCRC meeting on 6/14/17 at which the agency sought and received approval to use a different selection procedure.
☐ The Agency certifies that each affected CB/BP received written notice on __/__/__, at the time that a notice of intent to enter into negotiations was published for the subject concession, and provided a copy of such

notification to the members of the Committee within five days on __/__/__.

- ☐ The Agency certifies that based on exigent circumstances the FCRC unanimously approved waiver of advance written notice to each affected CB/BP on __/__/__.

Law Department approved concession agreement on __/__/__

Award is a major concession.

☐ YES ☒ NO

If YES, award was approved pursuant to Sections 197-c and 197-d of the NYC Charter as follows:

☐ CPC approved on __/__/__ ☐ City Council approved on __/__/__ or ☐ N/A

AUTHORIZED AGENCY STAFF

This is to certify that the information presented herein is accurate and that I find the proposed concessionaire to be responsible and approve of the award of the subject concession agreement.

If the concession was awarded by other than CSB or CSP, additionally check the applicable box below:

- ☐ The concession was approved by the FCRC on __/__/__.
- ☐ The concession was not subject to the approval of the FCRC because it has a term of <30 days and is not subject to renewal.

Name _____ **Title** _____

Signature _____ **Date** __/__/__

CERTIFICATE OF PROCEDURAL REQUISITES

This is to certify that the agency has complied with the prescribed procedural requisites for award of the subject concession agreement.

Signature _____ **Date** __/__/__

City Chief Procurement Officer

RECOMMENDATION FOR AWARD OF CONCESSION AGREEMENT MEMORANDUM:
CONCESSION AGREEMENT AWARDED BY OTHER THAN CSB OR CSP

SUMMARY OF PROPOSED CONCESSION USE (Attach Proposed Agreement)

NYC & Company, Inc. ("NYC & Company") on behalf of the New York City Department of Small Business Services ("SBS") intends to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, for SBS to enter into a Sole Source License Agreement ("License Agreement") with Fire Replicas, LLC ("Fire Replicas") for the non-exclusive use of city-owned trademarks on merchandise. Fire Replicas sells replica fire trucks on its Fire Replicas e-commerce site. Fire Replicas has been a successful licensee in the past and their unique design capabilities and retail channel offer the opportunity for merchandise with city owned trademarks to be sold in places where it is not being sold currently. Therefore, it is in the City's best interest to enter into a sole source agreement with Fire Replicas. This proposed non-exclusive license agreement will not bar opportunities for other replica fire truck manufacturers.

Instructions: *Provide all information requested below; check all applicable boxes.*

A. SELECTION PROCEDURE

☒ Sole Source

☐ Other *Describe:*

B. NEGOTIATIONS

Instructions: *Describe the nature of negotiations conducted, including negotiations with respect to the amount of revenue offered.*

NYC & Company/SBS negotiated that Fire Replicas shall pay licensing fees equal to five percent (5%) of Net Sales with a guaranteed minimum royalty of fifteen thousand dollars (\$15,000) that shall be paid on or before July 14, 2020.

C. BASIS FOR AWARD (If sole source award, attach the offer; if other than a sole source award, attach the three highest rated offers, if applicable.)

The agency determined that award of the concession is in the best interest of the City because:

Fire Replicas held a non-concession agreement for the purpose of testing the product interest to its distribution channels and customers unique to Fire Replicas. At the time the non-concession agreement with Fire Replicas was executed the parties anticipated that the revenue would not exceed administrative costs, which were estimated to be \$8,500; however Fire Replicas received an extremely positive response from consumers and sales soared. Royalties totaled \$10,383.99. It was in the City's best interest to allow the sales to proceed. It was impossible to determine during negotiation of the non-concession agreement that the pilot program would have been so successful and, based on the information available at the time, there was no basis to justify bringing the matter before the FCRC for a concession agreement. Given Fire Replicas' past success and new consumer awareness, it is now in the City's best interest to enter into a concession agreement with Fire Replicas to develop this market segment. NYC & Company/SBS is seeking to enter into an agreement that includes the excess revenue from the non-concession agreement. Fire Replicas maintains unique manufacturing and distribution arrangements with their e-commerce site. Fire Replicas proposed unique designs to be created by Fire Replicas' manufacturing department to be used solely for this arrangement if approved. This proposed non-exclusive license agreement will not bar other opportunities for other replica fire truck manufacturers.

D. PUBLIC HEARING

☒ **N/A – Subject award NOT a significant concession]**

1. Publication & Distribution of Public Hearing Notice

- ☐ Subject concession is a **Citywide** concession and Agency hereby certifies that a notice containing a summary of the terms and conditions of the proposed concession and stating the time, date and location of the public hearing was published once in the City Record on __/__/__, which was not less than 15 days prior to the hearing date or a shorter period approved by the CCPO and was given to each affected CB-BP and the Committee Members on __/__/__, which was not less than 15 days prior to the hearing date. Agency also published a public hearing notice twice in the two newspapers indicated below. A copy of each such notice was sent to each affected CB-BP by __/__/__.

☐ _____, a NYC citywide newspaper on __/__/__ and __/__/__
☐ _____, a NYC citywide newspaper on __/__/__ and __/__/__

OR

- ☐ Subject concession is **NOT a Citywide** concession and Agency hereby certifies that a notice containing a summary of the terms and conditions of the proposed concession and stating the time, date and location of the public hearing was published once in the City Record on __/__/__, which was not less than 15 days prior to the hearing date or a shorter period approved by the CCPO and was given to each affected CB-BP and the Committee Members on __/__/__, which was not less than 15 days prior to the hearing date. Agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement twice in two newspapers indicated below. A copy of each such notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB-BP by __/__/__.

☐ _____, a NYC local newspaper published in the affected borough(s) on __/__/__ and __/__/__.
☐ _____, a NYC local newspaper published in the affected borough(s) on __/__/__ and __/__/__.

2. Public Hearing Date, Exception to Public Hearing Requirement

- ☐ A Public Hearing was conducted on __/__/__.

OR

- ☐ The Agency certifies that the total annual revenue to the City from the subject concession does not exceed one million dollars and a Public Hearing was not conducted because, pursuant to §1-13(q)(2) of the Concession Rules, the Agency gave notice of the hearing and did not receive any written requests to speak at such hearing or requests from the Committee that the Agency appear at the hearing. Furthermore, the Agency certifies that it published a notice in the City Record canceling such hearing on __/__/__ and sent a copy of that notice to all Committee Members.

LICENSE AGREEMENT

AGREEMENT made this 15th day of July, 2017, by and between the City of New York (the "City" or "Licensor"), acting by and through the New York City Department of Small Business Services with its principal place of business located at 110 Williams Street, 2nd Floor, New York, NY 10038, and Fire Replicas LLC a limited liability company organized and existing under the laws of the State of Wisconsin with its principal place of business located at P.O. Box 301, Cleveland, WI 53015 (hereinafter "Licensee").

IN CONSIDERATION OF the mutual promises, covenants and conditions set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION I (License)

Subject to the limitations, terms and conditions set forth herein, Licensor hereby grants to Licensee a limited, revocable non-exclusive license to use the trademarks and service marks listed in Exhibit 1 hereto (individually and/or collectively the "Property") solely in the manner approved in advance in writing by Licensor during the Term in connection with the manufacture, advertising, promotion, sale, and offering for sale of the products listed in Exhibit 2 in the United States (including its territories and possessions) and Canada ("Territory"). Licensed Products listed in Exhibit 2 shall be sold only in the distribution channels defined in Exhibit 3.

The license granted herein shall be personal in nature, and it is expressly understood and agreed that Licensee has no right to sublicense, assign, convey or transfer in any manner to any other person or entity any rights granted to it hereunder. Any attempt by Licensee, or anyone acting on its behalf, to sublicense, assign, convey or otherwise transfer the license granted herein shall be null and void and shall be grounds for immediate termination of this License Agreement by the City. All sales of Licensed Products pursuant to this License Agreement shall be made by or through Licensee, who agrees to account to Licensor for all sales in the Territory. The City hereby appoints as its agent for all purposes under this License Agreement NYC & Company, Inc., a not-for-profit corporation organized and existing under the laws of the State of New York and having an address at 810 Seventh Avenue, 3rd Floor, New York, NY 10019 ("NYC & Company").

SECTION II (Express Conditions and Limitations)

The license granted herein is subject to the following express conditions and limitations:

(a) Licensee agrees to use the applicable trademark and copyright notices as directed by Licensor (™, ® or ©), as well as any additional notations directed by Licensor in connection with the first and most prominent usages of the Property on or in connection with all Licensed Products, hang tags, and packaging: "All New York City logos and marks depicted herein are the property of the City of New York and may not be reproduced without written consent. © 2017 (or other year of initial publication). City of New York. All rights reserved." Licensee agrees to display the applicable notices and notations as directed by the City on all web sites, displays, advertising, sales brochures, and other promotional materials for each Licensed Product (hereinafter the "Promotional Materials"): "All New York City logos and marks depicted herein are the property of the City of New York and may not be used or reproduced without prior written consent. © 2017 (or other initial year of publication). City of New York. All rights reserved." Any shortened version of such notices may be used only with the City's prior written approval.

(b) Licensee agrees that it will not use the Property in any advertising, promotion, sale, or offering for sale of the Licensed Products except as depicted in Exhibit 2 hereto, or as approved by the City in advance in writing.

(c) Information labels which include the statements set forth in Exhibit 4, attached hereto and made a part hereof, shall be affixed to the Licensed Product, or to the packaging for the Licensed Product. The City may, from time to time after consultation with Licensee, amend the language of the labels upon written notice thereof to Licensee. Licensee shall purchase such hangtags, holograms and/or adhesive labels that identify and authenticate the Licensed Product ("Product Authentication Materials") as required by the City from the City's authorized supplier of Product Authentication Materials. Such Product Authentication Materials shall be displayed in connection with Licensed Products sold or offered for sale by Licensee in a form and location specified by the City.

(d) The Property shall not be used in connection with the trademarks, service marks, trade names, corporate names, or personal names of any third party, except with the prior written consent of the City.

(e) The Property shall not be used by Licensee or any entity or individual controlled directly or indirectly by Licensee as or as any part of its corporate name, trade name, fictitious name, "d/b/a," symbol, logo, or other identifier.

(f) The Licensed Product and Licensee's manufacture, sales, promotion, marketing and selling of the Licensed Product shall be in full compliance (at Licensee's sole cost and expense) with all applicable federal, state and local statutes, rules, regulations and orders. If Licensee is required to or chooses to recall or remove the Licensed Product to maintain conformity to any such statutes, rules, regulations or orders, Licensee shall bear all costs, expenses and charges caused by or related to such recall or modification.

(g) No license is granted hereunder for the use of the Property for any purpose other than upon or in connection with the Licensed Product. No license is granted hereunder for the manufacture, sale or distribution of Licensed Products to be used for publicity purposes, in combination sales, as giveaways, or to be disposed of under similar methods of merchandising. In the event that Licensee desires to sell Licensed Products for such purposes, Licensee acknowledges and agrees that it must first seek and obtain a separate license therefore from the City, and that the user thereof must also obtain a separate license from Licensor for such use of the Licensed Products. Licensee acknowledges that such separate license may be withheld for any reason.

(h) Licensee may manufacture, promote, advertise, sell, and offer for sale the Licensed Product only in the form approved by the City.

(i) Subject to the City's prior written approval in the City's sole discretion, Licensee agrees to adhere to such quality and ethical standards as may be provided by the City from time to time. The current quality control guidelines and ethical standards in effect are attached hereto as Exhibit 5 and 6.

(j) Subject to the City's prior written approval in the City's sole discretion, Licensee shall sell the Licensed Products in the Territory. The City may object to the continued sale of any Licensed Products that the City determines in its sole discretion to be inconsistent with the goodwill and reputation represented by the Property, or otherwise not in the best interests of the City.

(k) Licensee agrees and acknowledges that its license extends only to the Territory, and that it has no rights in the Property or to export, sell or authorize or permit the sale of any Licensed Products or other products or services bearing or otherwise associated with the Property outside the Territory, or any such proposed or potential sales that Licensee reasonably knows or should know would occur outside the Territory.

(l) Except to the extent that exclusive rights are explicitly granted hereunder, the parties agree and acknowledge that the City reserves the right to use itself or license to others the right to use the Property on any products or services, including those specifically defined as Licensed Products under this License Agreement.

(m) Co-Op Budget – Licensee will provide NYC & Company with a minimum of one hundred (100) units per year to be used, in their sole discretion, as promotional products.

SECTION III (Term)

This License Agreement shall become effective upon written notice from NYC & Company to Licensee (the "Effective Date"). The term (the "Initial Term") of this License Agreement shall commence October 1st, 2016 (Effective Date) and shall continue through July 15th, 2020 (Termination Date), unless sooner terminated pursuant to the terms and conditions of this License Agreement. Licensor shall have the option in its sole discretion of renewing this License Agreement on substantially the same terms and conditions for a period of two (2) years (together with the Initial Term, the "Term"). Nothing herein shall be construed as obligating Licensor to exercise its renewal option.

SECTION IV (License Years)

For purposes of administering this License Agreement and of computing royalty payments owing from Licensee to the City hereunder, the term "License Year" shall apply to each calendar year during the Term.

SECTION V (Royalties)

In each License Year of this License Agreement, for products bearing solely the Licensed Property (or the Property with the Licensee's marks) Licensee shall pay to NYC & Company for the license granted herein a royalty equal to five percent (5%) of Net Sales. In the event the parties wish to co-brand the Property and the Licensee's marks with any additional marks, the parties shall mutually agree to co-brand and mutually agree to the co-brand royalty in an amendment to this Agreement. The term Net Sales means the gross invoice price billed to purchasers of Licensed Products (whether sold by Licensee or any person or entity acting on behalf of Licensee) less only promotional allowances, taxes, freight charges (if separately stated) and such other discounts as may be approved in writing by NYC & Company, and any actual and adequately documented returns. Net Sales shall include insurance proceeds received by Licensee in payment for Licensed Products. Licensed Products shall be considered sold (and therefore included in Net Sales and subject to royalty payments) when they are billed, invoiced, shipped, or paid for, whichever occurs first. No costs incurred in the manufacture, sale, offering for sale, promotion, advertisement, or shipment of the Licensed Products shall be deducted, nor shall deductions be made for cash, taxes, tariffs, freight, advertising, any other discounts or uncollectible accounts, or any other purpose. Sales of Licensed Product made other than in an arm's length transaction shall be deemed to have been made at the regular wholesale price for such Licensed Products.

SECTION VI (Guaranteed Minimum Royalty)

Notwithstanding any other royalty payment requirements of this License Agreement, including those set forth above, Licensee shall pay to NYC & Company guaranteed minimum royalties and annual advances in the amounts and on the dates set forth below:

Guaranteed Minimum:

The following total Guaranteed Minimum Royalties for each year shall be payable, inclusive of the applicable Annual Advance set forth above, as follows:

On or before July 14, 2020: \$15,000

For the avoidance of doubt, any amount accrued prior to October 1st, 2017 will not be included in the Guaranteed Minimum Royalties. The calculation for the Guaranteed Minimum Royalties shall begin as of October 1st, 2017 as described in Section III above.

All Guaranteed Minimum Royalty payments shall be nonrefundable and shall be made whatever the Net Sales of the Licensed Products have been or are for any of the License Years, and shall be applied to and credited as advances against Licensee's liability for royalties for each License Year for which the License Agreement is in effect. No carry over of excess earned royalty (over the Guaranteed Minimum Royalty) or deficiency of earned royalty (under the Guaranteed Minimum Royalty) into subsequent license periods within the term shall be allowed.

SECTION VII

(Royalty Payments, Accounting and Statements)

Licensee shall furnish to NYC & Company the following no later than thirty (30) days after the end of each calendar quarter (beginning with the calendar quarter in which the initial shipment of Licensed Products covered by this License Agreement is made):

(a) complete and accurate statements in a format approved by NYC & Company and certified in writing to be accurate by an officer of Licensee, itemized by (a) product item number; (b) City Agency and/or specific trademark associated with such Agency (e.g., FDNY, NYPD) and showing the net number of units sold inclusive of returns, item description and Average Sales price of the Licensed Products sold by Licensee during the preceding quarter. Such statements shall be furnished to NYC & Company whether or not any Licensed Products have been sold during the preceding quarter; and

(b) payment of the earned royalty and/or guaranteed minimum royalty due from sales during the preceding quarter. In the event Licensee's earned royalty in a given quarter is less than the guaranteed minimum royalty, then payment shall include the difference between earned royalty and the guaranteed minimum royalty.

The receipt or acceptance by NYC & Company or the City of any statements furnished pursuant to this License Agreement or any royalties paid hereunder (or the cashing of any royalty checks paid hereunder) shall not preclude NYC & Company or the City from questioning the correctness of such statement or payment at any time. In the event any inconsistencies or mistakes are discovered in such statements or payments, they shall immediately be rectified and the appropriate payments made by Licensee. In the event of an overpayment by Licensee, Licensee may deduct such mutually verified overpayment from any earned royalty or guaranteed minimum royalty payment due with the next regular quarterly royalty statement and payment. In the event no further royalty payments would be forthcoming after discovery and mutual verification of the payment, then Licensee shall receive a refund of such overpayment within thirty (30) days after its written request for a refund is received by NYC & Company.

In the event that Licensee fails to make any payments, including, advances, guaranteed minimum royalty, earned royalty and audit findings, when such payments are due under this License Agreement, interest shall be charged at an annual rate of eighteen percent (18%), or the maximum rate allowed by law, whichever is lower. All payments made hereunder shall be in United States currency drawn on a United States bank. Licensee shall keep accurate books of account and records covering all transactions related to this License Agreement for at least six (6) years after termination of this License Agreement.

SECTION VIII

(Audit Rights)

The City or its authorized agent shall have the right during business hours upon forty-eight (48) hours' advance notice to examine and request copies of Licensee's books, records, and accounts and all other documents and materials in the possession or under the control of Licensee relating to the sale of the Licensed Product or this License Agreement to such extent as may be necessary to determine the accuracy or inaccuracy of

any royalty statements submitted by Licensee to Licensor. Licensee shall segregate its records and agrees that such audit may be used as a basis for settlement of charges under this License Agreement. The City may also at any time select any independent accounting firm to review Licensee's books, records and accounts, and to check shipments and verify the account (hereinafter referred to as the "Audit"). In the event that the Audit reveals any underpayment by Licensee to Licensor, Licensee shall remit payment for the amount shown to be due within ten (10) days, of receipt of official audit report plus a late charge in the amount of eighteen percent (18%) per annum, or the maximum rate allowed by law whichever is lower, on all amounts shown to be owing by Licensee. In the event that the Audit determines that Licensee has underpaid by an amount equal to five percent (5%) or more of the total amount shown to be due to Licensor for the period audited, Licensee shall reimburse Licensor or its agent for all costs and expenses of the Audit. In addition, if the discrepancy is an amount equal to five percent (5%) or more and a discrepancy or underpayment of 5% or more had been found in at least one prior instance, Licensor may terminate this License Agreement by giving Licensee notice within sixty (60) days after receipt of the audit report disclosing the discrepancy. Licensee shall retain all books of account and records relating to this License Agreement for at least six (6) years after the termination or expiration of this License Agreement, and any renewals thereof and Licensor's right to audit such records during the duration of this License Agreement and for six (6) years thereafter. The parties acknowledge and agree that the powers, duties, and obligations of the Comptroller of the City of New York pursuant to the provisions of the New York City Charter shall not be diminished, compromised, or abridged in any way.

SECTION IX (No Assignment)

This License Agreement is personal to Licensee and may not be assigned in whole or in part by Licensee without the prior written consent of the City, which may be withheld in the sole discretion of the City. Any attempted or purported assignment or other transfer, sublicense, mortgage or other encumbrance of this License Agreement by Licensee without the prior written approval of the City shall be null and void and grounds for immediate termination of this License Agreement by the City.

SECTION X (Trademark Ownership)

(a) Licensee agrees that by virtue of this License Agreement it does not and shall not claim any right, title, or interest in the Property or any part thereof (except the right to use them in accordance with this License Agreement), and that any and all uses thereof by Licensee shall inure to the benefit of the City. Licensee acknowledges the City's sole right, title, and interest in and to, and ownership of the Property and the validity of the trademarks and service marks that are part of the Property and the City's rights therein. Licensee agrees that it will not raise or cause to be raised any challenges, questions, or objections to the validity, registrability, or enforceability of the Property, to this License Agreement or to the validity of the Property and the City's rights therein, and shall not contest such right and title, nor do or permit to be done any act or omission which will in any way impair the rights of the City with respect to such Property. Any violation of this paragraph shall constitute an immediate breach of this License Agreement and cause for immediate termination by the City.

(b) Licensee agrees to reasonably assist the City in protecting the City's rights to the Property, including but not limited to reporting to the City any infringement or imitation of the Property of which Licensee becomes aware. The City shall have the sole right to determine whether to institute litigation with respect to such infringements, as well as the sole right to select counsel. The City may commence or prosecute any claims or suits for infringement of the Property in its own name or the name of Licensee or join Licensee as a party thereto. The City shall be entitled to keep the entire amount of any recovery. If the City brings an action against any infringement of the Property, Licensee shall cooperate with the City and lend whatever assistance is necessary, subject to being reimbursed for its reasonable and pre-approved out-of-pocket expenses.

(c) If claims are made against the City, NYC & Company, or Licensee with respect to the use of the Property in connection with the Licensed Products, then the parties agree to consult with each other on a suitable course of action. In no event shall Licensee, without the prior written consent of the City, have the right to acknowledge the validity of the claim of such party, to obtain or seek a license from such party, or to take any

other action which might impair the ability of the City to defend or otherwise contest the claim of such party. The City shall have the right to participate at its own expense in the defense of any claims or suit instituted against Licensee with respect to the use by Licensee of the Property.

(d) Licensee agrees to make modifications requested by the City in Licensee's use of the Property or to discontinue use of the Property on the Licensed Products which are involved, if the City, in its sole discretion, determines such action to be necessary or desirable to resolve or settle a claim or suit or to eliminate the threat of a claim or suit by any party.

SECTION XI (Goodwill)

(a) Licensee recognizes and acknowledges that the Property and the City's name and reputation are the exclusive property of the City and that they communicate to the public, worldwide, a reputation for high standards of quality and service, which reputation and goodwill have been and continue to be unique to the City. Licensee further recognizes and acknowledges that the Property has acquired secondary meaning in the mind of the public. The Property shall not be used in connection with any illegal, illicit or immoral purpose or activity, or in any manner which would be inconsistent with or damaging to the City's name and reputation. The City shall have the right to terminate this License Agreement immediately, upon written notice, in the event that any part of the Property is used by Licensee in connection with any illegal, illicit or immoral activity. In addition, in the event that any part of the Property is used by Licensee in any way which, in the reasonable judgment of the City, is inconsistent with or damaging to the City's name or reputation, the City shall so notify Licensee in writing and this License Agreement shall terminate unless Licensee ceases and halts all such uses immediately.

(b) Licensee shall use the Property only in the manner specified by the City. Licensee acknowledges and agrees that all use of and goodwill in the Property shall inure to the sole benefit of the City. Licensee shall not acquire any rights in the Property by virtue of any use it makes of the Property. Licensee shall not attempt to register the Property alone or as part of any other trademark, service mark, trade name, or corporate identifier (including without limitation its own trademark), nor shall Licensee use, adopt as its own, or attempt to register any marks, names, domain names, designations, or indicia that are the same as or similar to the Property.

(c) Licensee agrees that it will apply the proper notations on all Licensed Products, tags, labels, package inserts, containers, packaging, advertising, promotional and display materials or the like containing the Property as set forth in Exhibits 2 and 3 hereto.

(d) Any art work or other materials conceived under or resulting from this License Agreement, including but not limited to copyrighted materials and trademarks, trade names, service marks, service names and trade dress and the like, whether developed by Licensee or on behalf of Licensee shall be considered "work made for hire" within the meaning of 17 U.S.C. §101 and is the exclusive property of the City upon creation. In the event that such materials are deemed not to be a work made for hire, Licensee hereby irrevocably assigns to the City its entire right, title, and interest in and to such work and any derivative works thereof (including without limitation all rights of copyright). Licensee agrees to execute any documents as may be deemed necessary or desirable by the City to register in its own name, record, confirm, clarify, or otherwise cause the foregoing assignment of rights to the City to have full legal effect worldwide. If Licensee desires to develop any new or different design for any mark, symbol, logo character or other element included within the Property, Licensee shall first obtain the City's written approval, and in any event all such designs shall be fully subject to the provisions of this paragraph and owned in full by the City.

(e) Licensee acknowledges that, from time to time and without notice to Licensee, it may be necessary or desirable for the City to modify certain elements of the Property in connection with the Licensed Products, to include additional elements to the Property, or to discontinue use of some or all of the elements of the Property. Accordingly, the City does not represent or warrant that the Property or any elements thereof will be maintained or used in any particular fashion. Any new elements or modifications to existing elements used by the City following the execution of this License Agreement may be included in, or deleted from (as applicable), the

Property at the sole discretion of the City. Licensee agrees to comply with the City's written request to include such elements as, or to delete such elements from, the Property within a reasonable period of time from Licensee's receipt of such written request.

(f) The City shall have the right, but shall not be under any obligation, to use the Property, Licensed Products, and/or the name of Licensee so as to give the Property, and/or the Licensed Products full and favorable prominence and publicity. The City shall be under no obligation whatsoever to use or continue using the Property, the Licensed Products and/or the name of Licensee in connection with its products or services.

SECTION XII (Termination Rights)

Without prejudice to any other rights, the City has the right to terminate this License Agreement upon written notice to Licensee, effective immediately, at any time that any of the following occurs:

(a) If Licensee shall cease to manufacture and sell the Licensed Products for any reason (except for a cause beyond the control of Licensee, including "acts of God"), for a period of three (3) consecutive months or more.

(b) If Licensee shall fail to make any payment due hereunder or to deliver any of the statements herein referred to, or breaches any other obligation hereunder, and if such default shall continue for a period of thirty (30) days after written notice of such default is sent by the City to Licensee. Licensee shall pay interest on the unpaid balance thereof from and including the date such payment becomes due until the date the entire amount is paid in full at a rate equal to the prime rate being charged in New York, New York, by Citibank as of the close of business on the date the payment first becomes due plus five percent (5%) (or the maximum rate which legally can be paid by Licensee, if lower).

(c) If Licensee defaults on any obligation that is secured by a security interest in any Licensed Product, Licensee shall immediately and automatically no longer have the right to sell or otherwise transfer Licensed Products or otherwise use the Property until it notifies the City of the occurrence of such default on any such obligation, and Licensor notifies Licensee that Licensor has elected to waive its right to terminate this License Agreement.

(d) If Licensee makes any assignment for the benefit of creditors, or files any petition under Title 11, United States Code, or files in bankruptcy or is adjudicated as bankrupt or insolvent, or if any trustee in bankruptcy or insolvency is appointed under the laws of the United States or of any State. No assignee for the benefit of creditors, custodian, receiver, trustee in bankruptcy, sheriff or any other officer of the court or official charged with taking over custody of Licensee's assets or business may continue this License Agreement or exploit the Property if this License Agreement terminates pursuant to this paragraph. Notwithstanding, if, pursuant to Title 11, United States Code, or any amendment or successor thereto, a trustee in bankruptcy or Licensee, as debtor, is permitted to assume this License Agreement and does so and, thereafter, wishes to assign this License Agreement to a third party, and that assignment complies with Title 11 of the United States Code, the trustee or Licensee shall notify Licensor of same. Said notice shall set forth the name and address of the proposed assignee, the proposed consideration for assignment and all other relevant details of the assignment. Such notice shall be deemed to grant the Licensor the option to have this License Agreement assigned to such assignee for such consideration, or its equivalent in money and upon such terms as specified in the notice. The option may be exercised by written notice to the trustee or Licensee by Licensor within fifteen (15) days from Licensor's receipt of the notice, or within such shorter time as may be deemed appropriate by the court in a bankruptcy proceeding. If Licensor fails to give notice to the Licensee or trustee within said period, the Licensee or trustee may execute the assignment to the entity referred to in the notice for the consideration and on the terms specified therein. Nothing contained herein shall be deemed to preclude or impair any rights Licensor may have as a creditor in any bankruptcy proceeding.

(e) If Licensor determines that this License Agreement should be terminated without cause.

(f) If Licensee violates the non-assignment or change in controlling interest provisions of this License Agreement.

(g) If Licensee fails to sell Licensed Products within six months of the date of this License Agreement.

Upon termination or expiration of this License Agreement, except as otherwise provided in Section XIII, during the sell-off period, all royalties earned and all applicable guaranteed minimum royalties shall become immediately due and payable.

SECTION XIII (Post Termination)

Upon the expiration of this License Agreement (but not upon termination pursuant to Section XII), Licensee shall be permitted ninety (90) days to sell its remaining inventory of Licensed Products. Sales under this section shall require payment of royalties and all other duties and obligations of Licensee under this License Agreement shall remain in force during the sell off period. At the end of such sell-off period, or upon termination pursuant to any other provision this License Agreement Licensee shall immediately discontinue manufacture, promotion, advertisement, and sale of Licensed Products. In addition, upon expiration or termination of this License Agreement for any reason, Licensee shall deliver to Licensor, or destroy or alter under Licensor's supervision, all molds, dies, prints or other equipment used to manufacture the Licensed Products and Promotional Materials so that such equipment no longer can be used to manufacture products or promotional materials bearing, displaying, or otherwise including the Property and shall provide Licensor with a letter confirming depletion or destruction of such inventory. Licensee acknowledges and agrees that its failure to cease manufacture, sale, advertising, or promotion of the Licensed Products upon expiration or termination of this License Agreement will result in immediate and irreparable harm to Licensor. Licensee further acknowledges and admits that Licensor has no adequate remedy at law for Licensee's failure to cease manufacture, sale, advertising, or promotion of the Licensed Products upon termination or expiration of this License Agreement, except as expressly provided for above. Licensee acknowledges and admits that, in the event of any such failure by it to cease manufacture, sale, advertising, or promotion of the Licensed Products, Licensor shall be entitled to equitable or injunctive relief against Licensee's failure, in addition to any and all other remedies at law that are available to Licensor.

SECTION XIV (Samples and Approvals)

(a) The Licensed Products shall meet or exceed the requirements imposed by any and all laws, regulations, government standards, guidelines, manufacturing codes, rules, and the like applicable to the Licensed Products. Without limiting the foregoing, no Licensed Products shall be manufactured from any flammable, explosive, toxic, or otherwise inherently dangerous materials or substances, nor designed so as to constitute any inherent danger to the consumer. Further, Licensee agrees that the Licensed Products shall be of a standard of quality at least as high as that of the product samples initially approved by Licensor so as to be suited to their exploitation and to the protection and enhancement of the Property and the goodwill pertaining thereto.

(b) The Licensed Products shall be manufactured in accordance with the manufacturing specifications, protocol, safety, and quality standards that have been reviewed and approved in writing by Licensor ("Specifications"), which, once approved, shall be deemed to be a part of this License Agreement. Licensor may amend such Specifications from time to time and shall provide Licensee with reasonable notice of such changes so that the Licensed Products may be adjusted to meet such changed quality standards, if required.

(c) The Specifications shall include at least the following information (and other information which Licensor requests regarding particular Licensed Products): (i) a description of the materials used in the Licensed Products, the materials' dimensional tolerances, performance and durability requirements, specifications that enable the materials to meet governmental regulatory requirements (if any) and such other appropriate information that will accurately describe the Licensed Products and their expected performance during use by the consumer; and (ii) a quality assurance plan that is used to assure the continuing acceptable quality of the Licensed

Products. The plan shall include a description of the quality controls observed in the Licensed Products' manufacture, and the procedures followed to audit and verify continued quality and conformance to specifications of the Licensed Products, as well as applicable laws and regulations.

(d) The Specifications shall be provided to Licensee's suppliers and manufacturers of the Licensed Products, and Licensee shall require its suppliers and manufacturers to comply with the Specifications. Licensors shall have the ability to inspect Licensee's facilities and warehouses and those of its suppliers and manufacturers at any time with or without prior notice to assure Licensee's compliance with this paragraph.

(e) Licensee agrees to submit, at the Licensors' request and at no cost to Licensors (i) initial sketches and/or design concepts; (ii) finished artwork or final proofs; (iii) prototypes or pre-production samples; and (iv) a minimum of one (1) and maximum of twelve (12) final production samples (the "Samples") of the Licensed Products (and any variations thereof), as well as initial samples of subsequent production run(s) if such subsequent production run(s) vary in any manner from prior runs, for Licensors' inspection, testing, analysis and approval prior to any sale or shipment of the Licensed Products. If requested by Licensors, such samples (together with the Specifications) shall be submitted by Licensee to an independent laboratory or other test facility approved in writing by Licensors. All costs associated with such inspection, testing and analysis shall be borne by Licensee, and the results of such inspection, testing and analysis shall be submitted to Licensors for its approval. Licensee shall also provide a reasonable number of samples of the Licensed Product to Licensors in accordance with this paragraph at reasonable intervals of no less than once every twelve (12) months during the Term, with such additional inspection, testing and analysis as Licensors may require in the manner set forth in this paragraph for purposes of product review and quality control.

(f) Licensors shall use reasonable efforts to communicate its written approval or disapproval within forty (40) days of receipt of Samples of the Licensed Products. Any Samples not expressly approved shall be deemed disapproved. If Licensors does not approve the Samples of the Licensed Products, the reasons for disapproval shall be communicated to Licensee. After the Samples are approved pursuant to this paragraph, Licensee shall not depart therefrom in any material respect without Licensors' prior written consent, and Licensors shall not withdraw its approval of the Samples except for good cause.

(g) Licensee shall adhere to Licensors' graphic and packaging standards and guidelines in the use of the Property and shall use the materials depicted in Exhibit 4 hereto, which have been approved by Licensors. To the extent that Licensee wishes to amend or alter the graphics depicted in Exhibit 4, Licensee shall submit to Licensors for Licensors' prior written approval all tags, labels, package inserts, containers, packaging, advertising, promotional, display or sales materials or the like containing or referring to the Property. Licensors shall use reasonable efforts to communicate its written approval or disapproval within forty (40) business days of its receipt of items under this paragraph. Any materials not specifically approved shall be deemed disapproved. If Licensors does not approve an item under this paragraph, the reason for such disapproval shall be communicated to Licensee.

(h) Licensee shall at its own cost handle all product warranty and/or guarantee issues, responses and compliance requirements, as well as all consumer inquiries or complaints (collectively, "Consumer Inquiries") relative to any of the Licensed Products. Licensors shall forward to Licensee for handling any and all such Consumer Inquiries that Licensors receives. Upon request by Licensors, Licensee shall advise Licensors in writing of the manner in which it handled any Consumer Inquiry. In addition, Licensee shall provide Licensors with a quarterly report (submitted with royalty reports pursuant to Section VII hereto) containing all data and information regarding Consumer Inquiries handled during the quarter.

(i) Licensee shall immediately advise Licensors of any product recall considerations or deliberations and provide Licensors with the right to attend and have input into such deliberations. Licensors shall have the ability to declare a product recall of such Licensed Products as Licensors determines in good faith after consulting with Licensee that any product recall is necessary for reasons of public health, safety, welfare or damage to reputation or good will. Licensee shall bear any and all costs related to any product recall of the Licensed

Products using the Property whether voluntary, required by a governmental authority or the Licensor. Licensee shall have in place a comprehensive lot tracking program, starting with raw materials, to ensure such recall effectiveness.

(j) Licensee agrees not to use child labor in the manufacture of or otherwise in connection with any Licensed Products. The term “child” shall refer to a person younger than the local legal minimum age for employment or the age for compelling compulsory education, but in no case shall any children younger than fifteen (15) years of age (or fourteen (14) years of age where local law allows) be used to manufacture, package or sell the Licensed Products. In addition, Licensee agrees to comply with all applicable minimum wage, overtime, occupational safety and health and environmental protection laws in the manufacture and packaging of Licensed Products. Licensee shall perform all obligations under this License Agreement in accordance with applicable provisions of federal, state and local laws, rules and regulations as are in effect from time to time.

SECTION XV (Purchase Rights)

Licensor shall have the right to purchase from Licensee, at Licensee’s lowest available wholesale price, such number of royalty-free units of any Licensed Product as Licensor may from time to time specify in a notice to Licensee.

SECTION XVI (Indemnification)

Licensee hereby agrees to be solely responsible for and to indemnify, defend and hold harmless Licensor, NYC & Company, their affiliates and respective officers, agents, and employees, and to hold each of them harmless from and against any claims, judgments, demands, causes of action, damages, losses, costs and expenses, including but not limited to reasonable attorneys’ fees, which may be made or asserted by third persons in connection with the manufacture, design, sale, offering for sale, advertising, promotion or use of the Licensed Products, including those based on Licensee’s use of the Property authorized by this License Agreement. Such indemnification shall further extend to Licensee’s failure to comply with the terms of this License Agreement and Licensee’s unauthorized use of any patent, process, idea, method or device, or unfair trade practice, false advertising, trademark, copyright infringement or the like in connection with the manufacture, design, sale, advertising, promotion or use of the Licensed Products. Licensee expressly agrees that its obligations hereunder shall survive and continue beyond any termination or expiration of this License Agreement.

SECTION XVII (Existing Licenses)

Licensee hereby acknowledges that Licensor has previously granted and may continue to grant licenses to third parties for the use of the Property.

SECTION XVIII (Insurance)

Licensee agrees to carry commercial general liability insurance, including but not limited to product liability coverage, with insurer(s) having an A.M. Best rating of at least A- / “VII”, a Standard & Poor’s rating of at least A, a Moody’s Investors Service rating of at least A3, a Fitch Ratings rating of at least A-, or a similar rating by any other nationally recognized statistical rating organization acceptable to the New York City Law Department, and licensed to transact business where such insurance is issued. The commercial general liability insurance must: (x) be in an amount of at least one million dollars (\$1,000,000) per occurrence for bodily injury and property damage, one million dollars (\$1,000,000) for personal and advertising injury, two million dollars

(\$2,000,000) aggregate, and two million dollars (\$2,000,000) products/completed operations, (y) be at least as broad as that provided by the latest edition of Insurance Services Office (ISO) Form CG 00 01; and (z) include NYC & Company and the City, together with their respective officials and employees, as additional insureds under such policy with coverage at least as broad as the latest editions of either Insurance Services Office (ISO) Form CG 20 26 or ISO Form CG 20 36. Each year such insurance is required, Licensee shall provide NYC & Company and the City with a Certificate of Insurance, accompanied by either a duly executed "Certification by Insurance Broker or Agent" in the form required by the Licensor, or certified copies of all policies referenced in such Certificate of Insurance, evidencing the required limits of coverage and identifying NYC & Company and the City, including their respective officials and employees, as additional insureds with coverage pursuant to or at least as broad as the most recent editions of ISO Form CG 20 26 or ISO Form CG 20 36 under all such policies. Such insurance shall be maintained for at least six (6) years after the last date of sale by Licensee of any Licensed Product. In the event that Licensee fails at any time to carry insurance as required herein, Licensee shall immediately notify Licensor thereof and Licensor shall have the right to terminate this License Agreement immediately. Whenever notice of occurrence, claim or suit to an insurance company is required under any such policy, Licensee shall provide timely notice thereof on behalf of both NYC & Company and the City, including their respective officials and employees, and shall promptly send a copy of such notice(s) to both NYC & Company and the City. The copy of such notice to NYC & Company shall be sent to the address set forth in section XXII below and the copy to the City shall be sent to c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007. The existence of such insurance shall in no way limit Licensor's or NYC & Company's rights under this License Agreement, at law or in equity, including the right to be indemnified as set forth in this License Agreement.

Licensee waives all rights against the NYC & Company and the City, including their respective officials and employees, for any damages or losses that are covered under any insurance required by this License Agreement (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of Licensee.

SECTION XIX (Governing Law)

This License Agreement shall be construed in accordance with the laws of the State of New York, notwithstanding conflicts of laws principles. By execution of this License Agreement, Licensee consents to submit to the jurisdiction of the courts of the State of New York located in New York City and the federal courts located therein.

SECTION XX (No Partnership or Joint Venture)

Nothing in this License Agreement or in the course of performance under this License Agreement shall be construed to constitute a partnership or joint venture. Licensee shall have no right to obligate or bind Licensor in any manner whatsoever (nor shall Licensee hold itself out to any third party as being so authorized) and nothing contained herein nor in the course of performance hereunder shall give or is intended to give any right of any kind to any third party.

SECTION XXI (No Manufacturers, Importers, or Sublicensees)

Licensee shall provide Licensor with a list of the names and addresses of Licensee's manufacturers, importers and distributors and will notify Licensor of any change in such list. From time to time, Licensor may request that Licensee provide the names of its designers, raw material suppliers and/or authorized importers of the Licensed Products, and Licensee agrees to provide such information upon the request of Licensor. Licensee may sublicense rights under this License Agreement ("Sublicense") only with the prior, written approval of the Licensor, which may be withheld in Licensor's sole discretion. Each and every Sublicense granted

under this License Agreement shall contain such provisions as Licensor may require, including without limitation that the Sublicense shall be assignable to the Licensor upon the written demand of the Licensor.

SECTION XXII (Notices)

All notices required to be given under the terms of this License Agreement, or which either party hereto may desire to give to the other, shall be in writing and sent by mail to the following addresses:

If to Licensor:

NYC & Company
810 Seventh Ave.
New York, NY 10019
ATTN.: Bryan X. Grimaldi
Chief Operating Officer & General Counsel

With a copy to:

New York City Department of Small Business Services
110 Williams Street, 2nd Floor
New York, NY 10038

Additional copy to:

New York City Law Department
100 Church Street, 6th Floor
New York, NY 10007
ATTN.: Katherine Winningham

If to Licensee:

(Licensee name)(Licensee Address)
Attn: (Name)

SECTION XXIII (Confidentiality)

Except as otherwise required by law, Licensee agrees to, and shall cause its affiliates, agents, representatives, accountants, employees, officers and directors to: (i) treat and hold as confidential all information, reports or data, prepared, assembled, used or that Licensee comes to obtain under this License Agreement, and (ii) prior to publication, not disclose or provide access to such confidential information to any individual or organization without the prior written approval of Licensor. In the event that Licensee or Affiliate, agent, contractor, representative, employee, officer, or director of Licensee, becomes legally compelled to disclose confidential information of Licensor, Licensee must provide Licensor with prompt written notice of such requirement so that Licensor may seek a protective order or other remedy or waive compliance with this Article XXIII. In the event that such protective order or other remedy is not obtained, or compliance with this Article XXIII is waived, Licensee agrees to furnish only that portion of such confidential information which is legally required to be provided and exercise its reasonable best efforts to obtain assurances that confidential treatment will be accorded such information. Notwithstanding the foregoing, this Article XXIII shall not apply to any information that, at the time of disclosure, (i) was available publicly and not disclosed in breach of this License Agreement, (ii) was known to the receiving party without breach of an obligation of confidentiality or (iii) was

learned from a third party who was not under an obligation of confidentiality. The parties agree and acknowledge that remedies at law for any breach of the obligations under this Article XXIII may be inadequate and that in addition thereto Licensor and NYC & Company are entitled to seek equitable relief, including injunction and specific performance, in the event of any such breach.

In the event that Licensee believes that specific information it submits to Licensor or NYC & Company pursuant to this Agreement should be treated confidentially by Licensor or NYC & Company, Licensee shall so advise the party receiving the information in a writing identifying the specific information. Licensor and NYC & Company agree to treat information so designated as confidential proprietary information of Licensee, consistent with legal requirements.

The City or NYC & Company may be required, pursuant to the New York State Freedom of Information Law ("FOIL") (New York Public Officers Law Section 84 et seq.), to disclose information, or any portion thereof. In the event that disclosure is requested by a third party of materials designated by Licensee as confidential or proprietary information in accordance with this Section, the Licensor or NYC & Company will provide notice to Licensee and shall consult with Licensee to evaluate the extent to which such information may be withheld from disclosure under the provisions of FOIL.

Consistent with the requirements of FOIL, the final determination regarding disclosure shall be made by Licensor or NYC & Company in their sole discretion. In the event that Licensor or NYC & Company determines in its discretion that information may not be withheld, Licensor or NYC & Company, as appropriate will provide Licensee with prompt notice of intent to disclose in order that Licensee may invoke any rights or remedies to prevent disclosure to which it believes it may be entitled under the law.

Licensee expressly acknowledges and agrees that neither the Licensor nor NYC & Company will have any obligation or liability to Licensee in the event of disclosure of materials, including materials designated by Licensee as proprietary information, provided such disclosure is in accordance with this Section.

SECTION XXIV

(Investigations)

A. The parties to this License Agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York or City of New York governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

B. (i) If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City of New York, the State of New York, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City of New York, or any public benefit corporation organized under the laws of the State of New York, or;

(ii) If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City of New York or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City of New York, the State, or any political subdivision thereof or any local development corporation within the City of New York, then;

C. (i) The commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

(ii) If any non-governmental party to the hearing requests an adjournment, the commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to paragraph E below without the City of New York incurring any penalty or damages for delay or otherwise.

D. The penalties which may attach after a final determination by the commissioner or agency head may include but shall not exceed:

(i) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City of New York; and/or

(ii) The cancellation or termination of any and all such existing City of New York contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this License Agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City of New York incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by Licensor.

E. The commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraphs (i) and (ii) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (iii) and (iv) below in addition to any other information which may be relevant and appropriate:

(i) The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

(ii) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

(iii) The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City of New York.

(iv) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under D above, provided that the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in C(i) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

F. (i) The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

(ii) The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

(iii) The term “entity” as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City of New York, or otherwise transacts business with the City of New York.

(iv) The term “member” as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

G. In addition to and notwithstanding any other provision of this License Agreement the Commissioner or agency head may in his or her sole discretion terminate this License Agreement upon not less than three (3) days’ written notice in the event Licensee fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this License Agreement by Licensee, or affecting the performance of this License Agreement.

SECTION XXV (Miscellaneous)

A. No action at law or proceeding in equity by Licensee against Licensor or NYC & Company shall lie or be maintained upon any claim based upon this License Agreement or arising out of this License Agreement or in any way connected with this License Agreement unless Licensee has strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, all as herein provided.

B. No action shall lie or be maintained against Licensor or NYC & Company by Licensee upon any claims based upon this License Agreement unless such action shall be commenced within six (6) months after the date of final payment hereunder, or within six (6) months of the termination or conclusion of this License Agreement, or within six (6) months after the accrual of the cause of action, whichever first occurs

C. In the event any claim is made or any action is brought against Licensor or NYC & Company in any way relating to the Agreement herein on the basis of Licensee’s actions and in each case by a third party, Licensee shall diligently render to Licensor and NYC & Company without additional compensation any and all assistance which Licensor and NYC & Company may reasonably require of Licensee, subject to reimbursement for Licensee’s actual, reasonable, pre-approved expenses.

D. Either party shall report to the other party in writing within ten (10) working days of the date such party becomes aware of the initiation by or against it of any legal action or proceeding in connection with or relating to this License Agreement.

E. No claim whatsoever shall be made by Licensee against any officer, agent, or employee of Licensor or NYC & Company for, or on account of, anything done or omitted in connection with this License Agreement.

F. This License Agreement may be executed in two copies, each of which shall be deemed an original. This License Agreement contains the entire understanding between the parties with respect to the subject matter hereof and replaces and supersedes all prior agreements and understandings between the parties. This License Agreement may only be amended by a writing executed by all parties.

G. Headings used herein are for convenience only and shall not be considered part of this License Agreement. This Agreement has been negotiated by the parties hereto. No provision of this License Agreement shall be strictly construed against the drafter of the language concerned, but shall be interpreted applying the most reasonable interpretation under the circumstances, giving due consideration to the intentions of the parties at the time of contracting.

H. Licensee represents and warrants to Licensor that: (i) it is duly organized and validly existing under the laws of the State of New York, (ii) it has all necessary power and authority to execute, deliver and perform its obligations

under this Agreement; (iii) its execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action on its part; (iv) once executed and delivered, this Agreement will constitute its legal, valid and binding obligation, enforceable in accordance with its terms; (v) there are no legal or arbitral proceedings or any proceedings by or before any governmental or regulatory authority or agency, now pending or (to the knowledge of Licensee) threatened against Licensee which, if adversely determined, could have a material adverse effect on the financial condition, operations, business or prospects of Licensee; (vi) the execution and delivery of this Agreement and any related agreement to which it is party, the consummation of the transactions herein and therein contemplated and compliance with the terms and provisions hereof and thereof, will not conflict with or result in a breach of, or require any consent under, the charter, by-laws or partnership agreement, as applicable, of Licensee, or any applicable law or regulation, or any order, writ, injunction or decree of any court or governmental authority or agency, or any agreement or instrument to which Licensee is a party or by which it is bound or to which it is subject, or constitute a default under any such agreement or instrument, or result in the creation or imposition of any lien upon any of the revenues or assets of Licensee pursuant to the terms of any such agreement or instrument.

I. Licensors represents and warrants to Licensee that: (i) subject to applicable law, it has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; and (ii) to the best of Licensors knowledge, the execution of and delivery of this Agreement and any related agreement to which it is party, the consummation of the transactions herein and therein contemplated and compliance with the terms and provisions hereof and thereof, will not conflict with or result in a breach of, or require any consent under any agreement or instrument to which Licensors is a party or by which it is bound or to which it is subject, or constitute a default under any such agreement or instrument.

J. Each of the parties hereto shall use all reasonable efforts to take, or cause to be taken, all appropriate action, do or cause to be done all things necessary, proper or advisable under applicable law, and to execute and deliver such documents and other papers, as may be required to carry out the provisions of this License Agreement and consummate and make effective the transactions contemplated by this License Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement as of the date and year first above written.

NEW YORK CITY DEPARTMENT OF SMALL BUSINESS SERVICES

By:

Its:

Date of Signature: _____

APPROVED AS TO FORM
CERTIFIED AS TO LEGAL AUTHORITY:

Acting Corporation Counsel

Fire Replicas, LLC
By:

Its:

Date of Signature: _____

Exhibit 2

Licensed Products

Replica Fire Trucks

Exhibit 3

Distribution Channels

- (a) Mid-Tier and Better department store chains, specialty chains, boutiques and mall based retailers.
- (b) National Mass Merchants
- (c) Direct to consumer media such as websites, catalogues and television shopping
- (d) Independent Retailers

Exhibit 4

Product Labels and Graphics

City Seal Hologram

All products must include a permanent copyright notice and trademark designation etched on the back of the product. It must read “© 2017[or current year] City of New York. All Rights Reserved.”

If too little room is available to accommodate this etching, individual decisions will be made in consultation with NYC & Company, which shall have the right of prior approval over the final version.

All packaging must include at least the copyright notice “© 2017 [or current year] City of New York. All Rights Reserved.”

Exhibit 5

Quality Control Guidelines

- 1.** All licensed products and related materials associated with NYC & Company's licensing program, including but not limited to packaging, print ads, advertising initiatives, point of purchase displays, story boards, scripts, molds, brochures, videos, DVDs, labels, hangtags, catalogs, sales sheets and all collateral materials must be submitted to NYC & Company for approval prior to any production.
- 2.** Each product submitted for approval must, at every stage, be accompanied by a completed approval form (see "Sample Product Approval Form").
- 3.** All prototypes of any items which utilize New York City ("City") trademarks must be submitted at each stage of production. Based on written approval, Licensee may proceed to the next step.
- 4.** Contracts will contain NYC & Company's entire sample submission/ approval process. The following brief steps will be required for all product submissions:
 - Initial sketches and/ or design concepts
 - Finished artwork or final proofs
 - Prototypes or pre-production samples
 - Production samples
- 5.** Licensees are required to submit all licensed products in each style and variation.
- 6.** Product submissions shall be reviewed and evaluated for:
 - Accuracy of logo representation
 - Proper use of Pantone colors
 - Proper use of trademark designations
 - General appearance and quality of product
 - NYC & Company policies and standards
- 7.** All approvals granted are conditioned upon FULL EXECUTION OF THE LICENSING AGREEMENT AND TIMELY PAYMENTS, or with the prior written permission of NYC & Company
- 8.** Each logo is distinctive and therefore must be used separately on licensed product and collateral materials. Logos may not be reversed and/ or turned to appear in an opposite direction.
- 9.** All hard goods must include a permanent copyright notice and trademark designation etched on the bottom or other approved location on the product.
- 10.** Licensees must indicate the size of, and the amount of times, they intend to utilize City logo(s), third party logo(s) and/or corporate identification(s) in relationship to the size of the City logo prior to the licensee's logo use on products.
- 11.** All products are required to utilize holograms, hangtags and/ or labels purchased from the City's exclusive on-product authentication products supplier.
- 12.** Licensee agrees to use the following notice, TM, [®] or [©], as specified by the Licensor, in connection with the first most prominent usage of the Property on all Licensed Products, hang tags and packaging: "All New York City logos and marks depicted herein are the property of New York City and may not be reproduced without written consent. © 2017 [or other year of initial publication]. City of New York. All rights reserved." Licensee agrees to use the following notice, TM, [®] or [©], in connection with all displays, advertising, sales brochures, instruction manuals and other promotional materials for each Licensed Product (hereinafter the "Promotional Materials"):

“All New York City logos and marks depicted herein are the property of the City of New York and may not be used or reproduced without prior written consent. © 2017 [or other initial year of publication]. City of New York. All rights reserved.” If impracticable in a particular situation, a shortened version of such notices may be used with Licensor’s prior written approval.

13. Anytime a new factory is used to produce licensed merchandise, the licensee must have the vendor sign the City’s Ethical Standards Form (see attached). Any product approval form being submitted must list the factory name and factory contact information (foreign or domestic) where production of that particular item will occur. No product approvals will be given without this information.

Exhibit 6

Ethical Standards for the City of New York

The City of New York (“City”) is committed to conducting business in an ethical and responsible manner in all countries, and requires the same from all of its business partners. While the City recognizes that there are different legal and cultural environments in which factories operate throughout the world, these Ethical Standards for Vendors (“Standards”), set forth the basic minimum requirements all factories must meet in order to do business with the City.

These Standards apply to City rights holders of specific licensed products (“Licensees”) and factories that produce goods for the City (“Licensed Products”), including manufacturers, contractors and subcontracted manufacturers (hereinafter collectively referred to as “Vendors”). Under the agreement in place with each Licensee, the City has the right to approve all Vendors of Licensed Products. No Vendor will be approved and no currently approved Vendor will be retained who does not comply with these Standards. The City strongly encourages Vendors to exceed these Standards and promote best practices and continuous improvement throughout their factories.

Legal Requirements:

The City requires that its Vendors must operate in full compliance with all applicable laws and regulations of the countries in which they manufacture and compliance with all local environmental laws applicable to the workplace.

Forced Labor:

The City requires that its Vendors not use forced labor, including, but not limited to, prison, indentured, bonded or involuntary labor.

Child Labor:

Vendor agrees not to use child labor in the manufacture of or otherwise in connection with any Licensed Products. The term “child” shall refer to a person younger than the local legal minimum age for employment or the age for compelling compulsory education, but in no case shall any children younger than fifteen (15) years of age (or fourteen (14) years of age where local law allows) be used to manufacture, package or sell the Licensed Products. In addition, Vendor agrees to comply with all applicable minimum wage, overtime, occupational safety and health and environmental protection laws in the manufacture and packaging of Licensed Products.

Harassment or Abuse:

The City requires that its Vendors treat their employees with respect and dignity. Vendors must provide a work environment free of harassment, abuse or corporal punishment in any form. In addition, Vendors will not use monetary fines as a disciplinary practice.

Discrimination:

The City requires that its Vendors ensure that employment, including but not limited to hiring, salary, benefits, advancement, discipline or termination, is based solely on ability and not on any personal characteristics.

Health and Safety:

The City requires that its Vendors provide a safe and healthy working environment in accordance with applicable local law to prevent accidents and injury arising out of, linked with, or occurring in the course of work or as a result of the operation of employer facilities. Vendors who provide residential facilities must ensure these facilities

are also safe and healthy in accordance with applicable local laws.

Freedom of Association:

The City requires that its Vendors recognize and respect the legal right of employees to freely associate. Employees should not be subject to intimidation or harassment as a result of the peaceful exercise of their legal right to join or to refrain from joining any organization.

Compensation and Benefits:

The City requires that its Vendors pay employees at least the minimum compensation required by local law, and to provide all legally mandated benefits. In addition to their compensation for regular hours of work, employees shall be compensated for overtime hours at such premium rate as is legally required or, in those countries where such laws do not exist, at a rate at least equal to their regular hourly compensation rate.

Hours of Work:

The City requires that its Vendors ensure that, except in extraordinary business circumstances, on a regularly scheduled basis, employees shall (i) not be required to work more than the lesser of (a) sixty (60) hours per week or (b) the limits on regular and overtime hours allowed by the law of the country of manufacture, and (ii) be entitled to at least one day off in every seven day period.

Communication:

The City requires that its Vendors take appropriate steps to ensure that the provisions of these Standards are communicated to employees.

Monitoring and Compliance:

The City requires that its Vendors maintain on file all documentation necessary to demonstrate compliance with the City's Standards. Vendors must allow the City and its designated agents (including third parties) to engage in announced and unannounced monitoring visits, including confidential employee interviews.

City Vendors are required to take necessary corrective actions to promptly remediate any noncompliance. The City reserves the right to ultimately terminate its business relationship and/or cancel existing orders with any Vendor who is unwilling or unable to comply with these Standards.

CITY OF NEW YORK

FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 2)

RESOLVED, that the Franchise and Concession Review Committee authorizes the New York City Department of Parks and Recreation (Parks) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a Sole Source License Agreement (Agreement) with Bryant Park Market Events, LLC d/b/a Upsilon Ventures for the renovation, operation and maintenance of a food service facility inside a vacant comfort station located in the Allen Street Mall, Manhattan, and for the development and maintenance of the landscape of the Allen Street Mall plaza between Delancey Street and Rivington Street, Manhattan. It is anticipated that the term of the Agreement would be twenty (20) years.

BE IT FURTHER RESOLVED, that Parks shall submit the Agreement it proposes to enter into with Bryant Park Market Events, LLC d/b/a Upsilon Ventures to the Franchise and Concession Review Committee for approval.

THIS IS A TRUE COPY OF THE RESOLUTION ADOPTED BY THE
FRANCHISE AND CONCESSION REVIEW COMMITTEE ON

August 9, 2017

Date: _____

Signed: _____

Title: Director of the Mayor's Office of Contract Services

CONCESSION AGREEMENT PRE-SOLICITATION REVIEW MEMORANDUM COVER SHEET
(Complete and attach a CPSR Memorandum only if the selection procedure will be other than Competitive Sealed Bids)

AGENCY: New York City Department of Parks & Recreation ("Parks")	CONCESSION TITLE/DESCRIPTION: The renovation, operation, and maintenance of a food service facility in an existing comfort station structure located in the Allen Street Mall, Manhattan, and for the development and maintenance of the landscape of the Allen Street Mall plaza between Delancey Street and Rivington Street, Manhattan
# VOTES required for proposed action = 4 <input type="checkbox"/> N/A	CONCESSION IDENTIFICATION # M4-SB

SELECTION PROCEDURE
 (* City Chief Procurement Officer approval of CPSR required)

☐ Competitive Sealed Bids (CSB) (CSP)*
 ☐ Competitive Sealed Proposals

☒ Different Procedure * (☒ Sole Source Agreement ☐ Other _____)

☐ Negotiated Concession*

Recommended Concessionaire: Bryant Park Market Events, LLC d/b/a Upsilon Ventures

☒ EIN ☐ SSN # 42-1558034
 Attach Memo(s) *

CONCESSION AGREEMENT TERM	ESTIMATED REVENUE/ANTICIPATED BUSINESS TERMS (Check all that apply)
Initial Anticipated Term: <u>20 Years</u> Renewal Option(s) Term: <u>N/A</u> Total Anticipated Term: <u>20 Years</u>	<input type="checkbox"/> Additional description attached <input checked="" type="checkbox"/> The Greater of Annual Minimum Fee(s) v. % of Gross Receipts Yr 1 Annual Min. Fee \$10,000 vs 1.00% of Gross Receipts Yr 2 Annual Min. Fee \$20,000 vs 1.00% of Gross Receipts Yr 3 Annual Min. Fee \$30,000 vs 1.00% of Gross Receipts Yr 4 Annual Min. Fee \$40,000 vs 1.00% of Gross Receipts Yr 5 Annual Min. Fee \$50,000 vs 2.00% of Gross Receipts Yr 6 Annual Min. Fee \$75,000 vs 2.00% of Gross Receipts Yr 7 Annual Min. Fee \$100,000 vs 2.00% of Gross Receipts Yr 8 Annual Min. Fee \$105,000 vs 2.00% of Gross Receipts Yr 9 Annual Min. Fee \$110,250 vs 3.00% of Gross Receipts Yr 10 Annual Min. Fee \$115,763 vs 3.00% of Gross Receipts Yr 11 Annual Min. Fee \$121,551 vs 3.00% of Gross Receipts Yr 12 Annual Min. Fee \$127,628 vs 3.00% of Gross Receipts Yr 13 Annual Min. Fee \$134,010 vs 4.00% of Gross Receipts Yr 14 Annual Min. Fee \$140,710 vs 4.00% of Gross Receipts Yr 15 Annual Min. Fee \$147,746 vs 4.00% of Gross Receipts Yr 16 Annual Min. Fee \$155,133 vs 4.00% of Gross Receipts Yr 17 Annual Min. Fee \$162,889 vs 5.00% of Gross Receipts Yr 18 Annual Min. Fee \$171,034 vs 5.00% of Gross Receipts Yr 19 Annual Min. Fee \$179,586 vs 5.00% of Gross Receipts Yr 20 Annual Min. Fee \$188,565 vs 5.00% of Gross Receipts

LOCATION OF CONCESSION SITE(S)* ☐ N/A

Address: 76 Delancey Street, New York, NY 10002
Borough: Manhattan **C.B.:** 3
Block #: 20011 **Lot #:** 9999

*Attach additional sheet

CONCESSION TYPE (Check all that apply)

> Significant Concession:

☐ NO

☒ **YES Basis:**

☒ Total potential term ≥ 10 years ☒ Projected annual income/value to City $> \$100,000$ ☐ Major Concession

> Major Concession:

☒ **NO**

☐ **YES** - Award will be subject to review and approval pursuant to Sections 197-c and 197-d of NYC Charter.

NOTIFICATION REQUIREMENTS

Subject concession will be awarded by CSB or CSP.

☐ YES ☒ NO

If **YES**, check the applicable box(es) below:

☐ The subject concession is a Significant Concession and the Agency has/will complete its consultations with each

affected CB/BP regarding the scope of the solicitation at least 30 days prior to its issuance.

☐ The subject concession is a Significant Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan pursuant to

§1-

10 of the Concession Rules.

☐ The subject concession has been determined not to be a Major Concession and the Agency has sent/will send written notification of such determination to each affected CB/BP at least 40 days prior to issuance of the solicitation.

☐ The subject concession has been determined not to be a Major Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan pursuant to §1-10 of the Concession Rules.

If **NO**, check the applicable box below:

☒ The Agency certifies that each affected CB/BP has received/will receive written notice at least 40 days in advance of the FCRC meeting at which the agency will seek approval to use a different selection procedure.

☐ The Agency certifies that based on exigent circumstances it has requested/will request unanimous approval of the FCRC to waive advance written notice to each affected CB/BP.

☐ The Agency certifies that each affected CB/BP will receive written notice that the concession was determined to be non-major along with a summary of the terms and conditions of the proposed concession upon publication of a Notice of Intent to Enter into Negotiations. The agency further certifies that it will send a copy of this notice to the members of the Committee within five days of the notice to each affected CB/BP.

AUTHORIZED AGENCY STAFF

This is to certify that the information presented herein is accurate.

Name **Alexander Han**

Title **Director of Concessions**

Signature 

Date 5/2/2017

CITY CHIEF PROCUREMENT OFFICER

This is to certify that the agency's plan presented herein will comply with the prescribed procedural requisites for the award of the subject concession.

Signature 

Date 5/2/17

City Chief Procurement Officer

CONCESSION PRE-SOLICITATION REVIEW MEMORANDUM

A. **DETERMINATION TO UTILIZE OTHER THAN COMPETITIVE SEALED BIDS**

☐ N/A

Instructions: Attach copy of draft RFP or other solicitation document, and check all applicable box(es) below.

The Agency has determined that it is not practicable or advantageous to use Competitive Sealed Bids because:

- ☐ Specifications cannot be made sufficiently definite and certain to permit selection based on revenue to the City alone.
- ☐ Judgment is required in evaluating competing proposals, and it is in the best interest of the City to require a balancing of revenue to the City, quality and other factors.
- ☐ The agency will be pursuing a negotiated concession for the reasons listed in section (B)(3)(b)
- ☒ Other (Describe):

The New York City Department of Parks and Recreation ("Parks") seeks to enter into a Sole Source License Agreement ("Agreement") pursuant to Section 1-16 of the Concession Rules of the City of New York ("different procedure") for the reasons listed in section (B)(2) below.

B. **DETERMINATION TO USE OTHER THAN COMPETITIVE SEALED PROPOSALS**

☐ N/A

1. ***Briefly summarize the terms and conditions of the concession. Add additional sheet(s), if necessary.***

To be determined at a later date - when/if the Franchise and Concession Review Committee ("FCRC") approves the use by Parks of a different procedure to negotiate a Sole Source License Agreement with Bryant Park Market Events, LLC, D/B/A Upsilon Ventures ("Upsilon") for the renovation, operation, and maintenance of a food service facility in an existing comfort station structure located in the Allen Street Mall, Manhattan, and for the development and maintenance of the landscape of the Allen Street Mall plaza between Delancey Street and Rivington Street, Manhattan. It is anticipated that the term of the Agreement would be twenty (20) years.

2. ***Briefly explain the basis for the determination not to solicit Competitive Sealed Proposals.***

The comfort station structure was constructed in the 1930s to accommodate the riders of the Second Avenue elevated subway. The train was torn down in the 1940s and the comfort station stayed open until the 1950s, when it was closed permanently. In 2015, Parks allocated \$2M (\$1M in Mayoral Funds and \$1M from the Lower Manhattan Development Corporation) towards the renovation of the comfort station and plaza between Delancey Street and Rivington Street, but it is estimated that at least \$4M would be needed to make the structure functional again. As additional funding has not been identified, Parks sought a concessionaire for the site. In 2016, Parks obtained management jurisdiction for the entire Allen Street Mall between Delancey Street and Rivington Street from the New York City Department of Transportation ("DOT").

On July 15, 2016, Parks issued a Request for Proposals ("RFP") for a significant concession for the renovation, operation and maintenance of a food service facility inside a vacant comfort station located in the Allen Street Mall, Manhattan. The RFP sought a concession for a fifteen (15) year term with a heavy focus on capital commitments from proposers for the rehabilitation of the existing structure as a food service facility and to provide a functional public restroom.

Parks conducted extensive outreach in order to obtain as many proposals and as diverse a proposer pool as possible for this unique concession opportunity; Parks placed advertisements in the New York Times, the New York Post, Time Out New York, the Village Voice, and Minority Commerce publications, and conducted e-mail and telephone outreach to current concessionaires who might have been interested from when the

RFP was released on 7/15/16 until proposals were due on 9/15/16. Prior to the deadline for submission of proposals, Parks conducted a public site tour in August 2016; 29 people representing 18 different interested entities attended.

The uncertain condition of the long unused structure and the extensive amount of capital needed to construct a food service facility and public restroom had made the concession unappealing to most entities. Despite significant initial interest in the proposed concession (as evidenced by the attendance at the public site tour), Parks received only one proposal. Other potential proposers indicated that the uncertain condition of the long unused structure and the extensive amount of capital needed to construct a food service facility and public restroom, for only a fifteen-year term, made the concession unappealing and financially nonviable. Parks later inquired if a longer term (e.g., twenty years) would have resulted in proposals from the other site tour attendees – those potential proposers who responded to Parks represented that a twenty-year term would not have resulted in them submitting proposals, for varied reasons including the amount of capital work required, the uncertain condition of the long unused structure, the uncertain viability of a concession in the proposed location, and the potential scope of operations exceeding previous experience.

The one proposal Parks received came from Upsilon, a project development, marketing, hospitality, and production firm specializing in public-private partnerships and the use of public spaces and real estate for iconic attractions, sponsor activations, events, consumer engagement, temporary retail, and other revenue generating opportunities.

Upsilon's project and program portfolio includes:

- Bank of America Winter Village at Bryant Park;
- Holiday Shops at Bryant Park;
- Celsius at Bryant Park;
- Westfield World Trade Center;
- GRAMMY Park;
- LeFrak Center at Lakeside and Bluestone Café in Prospect Park;
- South Street Seaport ice-skating rink, event/activation space, and concession area;
- Big Apple Barbeque Block Party; and
- American Volleyball Professionals (AVP) Tour in New York City

Upsilon's proposal included a major rehabilitation of the current structure and construction of a second story to serve as additional seating and event space for the first floor food concession. Upsilon also proposed to construct a second structure to serve as a public restroom, with a roof terrace open for public use. Additionally, Upsilon proposed to develop and maintain the landscape of the Allen Street Mall plaza, between Delancey Street and Rivington Street.

After Parks reviewed the full extent of Upsilon's proposal and renderings, which went far beyond Parks' expectations, Parks consulted with DOT regarding the proposal's implications for the Allen Street Mall plaza, which is City property under DOT jurisdiction. Parks and DOT determined that Parks' current management jurisdiction was insufficient, and that it would be appropriate for the Allen Street Mall plaza between Delancey Street and Rivington Streets to be de-mapped as street and then mapped as parkland, thereby taking it out of DOT's jurisdiction. This will require a Uniform Land Use Review Procedure ("ULURP") action, a lengthy and expensive prerequisite that will significantly increase the cost and time required for developing the concession as proposed. Parks thereafter engaged in preliminary discussions with Upsilon and, in addition to its proposal, Upsilon has committed to undertake the ULURP process and its associated fees. The concession would then have a twenty (20) year term, or five (5) years longer than sought in the RFP, and include the rest of the Allen Street Mall plaza between Delancey Street and Rivington Street for development and maintenance.

It is anticipated that a Sole Source License Agreement with Upsilon would allow Upsilon to provide the public with the concession Parks originally sought (a new state-of-the-art food service facility and new public

restroom), while adding a new publicly accessible, elevated green space in a new second story to the existing comfort station building and an adjacent structure, and providing for the development and maintenance of the entire Allen Street Mall plaza between Delancey Street and Rivington Street.

Upsilon's proposal will enhance the economic activity of Manhattan's Lower East Side neighborhood and Upsilon's maintenance of the Allen Street Mall plaza will add to the overall beautification of the area. Upsilon has the financial means to develop and maintain the Allen Street Mall plaza between Delancey Street and Rivington Street; this will save the City a substantial expense for years to come. For these reasons, Parks believes that it is in the City's best interest to negotiate a Sole Source License Agreement with Upsilon rather than proceed with a competitive solicitation process.

3a. ***Briefly explain the selection procedure that will be utilized.***

Parks is requesting FCRC authorization to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a Sole Source License Agreement with Upsilon, which will go before the FCRC on August 9, 2017 ("Step 1"). Once negotiated, Parks and the FCRC will hold a joint public hearing on the proposed agreement before presenting it to the FCRC for "Step 2" approval at a second public meeting. If Parks determines the concession to be non-significant, Parks will present the fully negotiated agreement with Upsilon to the FCRC and request the required FCRC authorization to enter into the license agreement directly (without the need for an initial joint public hearing).

3b. ***If the selection procedure is a negotiated concession, check the applicable box: ☒ N/A***

The Agency made a determination that it is not practicable and/or advantageous to award a concession by competitive sealed bidding or competitive sealed proposals due to the existence of a time-sensitive situation where a concession must be awarded quickly because:

- ☐ The agency has an opportunity to obtain significant revenues that would be lost or substantially diminished should the agency be required to solicit the concession by competitive sealed bids or competitive sealed proposals and the diminished revenue does not relate only to the present value of the revenue because of the additional time needed to solicit competitive sealed bids or competitive sealed proposals; *[Explain]*
- ☐ An existing concessionaire has been terminated, has defaulted, has withdrawn from, or has repudiated a concession agreement, or has become otherwise unavailable; *[Explain]*
- ☐ The agency has decided, for unanticipated reasons, not to renew an existing concession in the best interest of the City and requires a substitute/successor concessionaire. *[Explain]*
- ☐ DCAS is awarding a concession to an owner of property adjacent to the concession property, or to a business located on such adjacent property, and has determined that it is not in the best interest of the City to award the concession pursuant to a competitive process because of the layout or some other characteristic of the property, or because of a unique service that can be performed only by the proposed concessionaire. *[Explain]*

Approved by CCPO: _____ **on** ____/____/____.

4. If the agency has/will request unanimous FCRC approval to waive advance written notice to affected CB(s) that a selection procedure other than CSB or CSP will be utilized, explain the exigent circumstances. ☒ N/A



NYC Parks

Mitchell J. Silver, FAICP
Commissioner

T 212.360.1305
F 212.360.1345

E mitchell.silver@parks.nyc.gov

City of New York
Parks & Recreation

The Arsenal
Central Park
New York, NY 10065
www.nyc.gov/parks

MEMORANDUM

To: Hon. Gale A. Brewer, Manhattan Borough President
Ms. Susan Stetzer, District Manager, Manhattan Community Board 3

FROM: Eric Weiss, Project Manager *EW*

SUBJECT: Intent to Seek Franchise and Concession Review Committee Approval to Utilize a Different Procedure to Negotiate a Sole Source License Agreement with Bryant Park Market Events, LLC d/b/a Upsilon Ventures for the renovation, operation and maintenance of a food service facility inside a vacant comfort station located in the Allen Street Mall, Manhattan

DATE: June 30, 2017

Pursuant to Section 1-16 of the Concession Rules of the City of New York, this is to notify the Manhattan Borough President and Manhattan Community Board #3 that the New York City Department of Parks and Recreation is seeking Franchise and Concession Review Committee ("FCRC") approval to utilize a different procedure to negotiate a Sole Source License Agreement with Bryant Park Market Events, LLC d/b/a Upsilon Ventures for the renovation, operation and maintenance of a food service facility inside a vacant comfort station located in the Allen Street Mall, Manhattan. It is anticipated that the term of the Agreement would be twenty (20) years.

This concession has been determined not to be a major concession as defined in Chapter 7 of the Rules of the City Planning Commission.

Please direct any questions or comments you may have to Eric Weiss, Project Manager, by phone at (212) 360-3483 or via email at eric.weiss@parks.nyc.gov.

Thank you.

CITY OF NEW YORK
FRANCHISE AND CONCESSION REVIEW COMMITTEE
(Calendar No. 3)

WHEREAS, the Franchise and Concession Review Committee (“FCRC”) authorized the New York City Department of Transportation (“DOT”) to utilize a different procedure pursuant to Section 1-16 of the Concession Rules of the City of New York to negotiate concession agreements with as yet unidentified non-profit organizations to provide for the operation, management and maintenance of as yet unidentified pedestrian plazas. Concessionaires for these pedestrian plazas were to be selected through a competitive application process.

WHEREAS, DOT utilized a different procedure pursuant to Section 1-16 of the Concession Rules of the City of New York and selected the Open Space Alliance for North Brooklyn, Inc. (the “Open Space Alliance”), 79 North 11th Street, Brooklyn, NY 11249, through a competitive application process.

BE IT RESOLVED that the FCRC authorizes DOT to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York to enter into a License Agreement (“Agreement”) with Open Space Alliance for the operation, management, and maintenance of a pedestrian plaza located on Union Avenue between North 10th Street and North 12th Street in the Borough of Brooklyn (“Licensed Plaza”), including through DOT-approved events, sponsorships, and subconcessions, including but not limited to providing for the sale of any of the following: prepared food, flowers, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts) that helps brand or promote the neighborhood or Open Space Alliance, and other similar merchandise within the Licensed Plaza.

Subconcessions will be awarded based on solicitations issued by Open Space Alliance in the basic form of a Request for Proposals or Request for Bids, subject to DOT’s prior written approval of both solicitation and award.

The Agreement provides for one (1) five-year term, commencing upon written Notice to Proceed, with two (2) two-year renewal options, exercisable at the sole discretion of DOT.

Open Space Alliance will be required to invest any revenue generated by this concession into the maintenance, repair and/or improvement, including reasonable administrative costs, of the Licensed Plaza.

THIS IS A TRUE COPY OF THE RESOLUTION ADOPTED BY THE
FRANCHISE AND CONCESSION REVIEW COMMITTEE ON

August 9, 2017

Date: _____

Signed: _____

Title: Director of the Mayor's Office of Contract Services

CONCESSION AGREEMENT RECOMMENDATION FOR AWARD MEMORANDUM COVER SHEET

(Attach, in the following order, applicable CRFA Memo, Responsibility Determination Form, approved CPSR Cover Sheet and, if the selection procedure was not CSB, the CPSR Memo and CCPO Memo (if applicable))

AGENCY: New York City Department of Transportation (DOT)	RECOMMENDED CONCESSIONAIRE Name: <u>Open Space Alliance for North Brooklyn, Inc. (Open Space Alliance)</u> Address: <u>79 North 11th Street, Brooklyn NY 11249</u> Telephone # <u>718-599-2718</u> <input checked="" type="checkbox"/> EIN <input type="checkbox"/> SSN # <u>01-0849087</u> Not-for-Profit Organization <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Certified by DSBS as M/WBE <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	CONCESSION TITLE/ DESCRIPTION: <u>Concession to operate, manage and maintain a pedestrian plaza, including through DOT-approved events, sponsorships, and subconcessions, including but not limited to providing for the sale of any of the following: prepared food, flowers, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts) that helps brand or promote the neighborhood or Open Space Alliance, and other similar merchandise within the Licensed Plaza.</u> CONCESSION I.D.# <u>2017Con4</u>
# VOTES required for proposed action = <u>4</u> <input type="checkbox"/> N/A		

LOCATION OF CONCESSION SITE(S*) Address: Pedestrian Plaza located on Union Avenue between North 10th Street and North 12th Street in the Borough of Brooklyn (Licensed Plaza) ☐
 N/A

*Attach additional sheet

Borough: Brooklyn **C.B. 1** **Block #** NA **Lot #** NA

SELECTION PROCEDURE

(*CCPO approval of CRFA required)

- ☐ Competitive Sealed Bids
☐ Competitive Sealed Proposals* (☐ FCRC approved Agency request to deviate from final recommendation of the Selection Committee on __/__/__)
☒ Different Selection Procedure*: (☐ Sole Source Agreement ☒ Other *DOT Plaza Program)

> FCRC approved different selection procedure on 04/14/10.

☐ Negotiated Concession*

CONCESSION AGREEMENT TERM

Initial Term: From Notice to Proceed (NTP) To Five (5) years from NTP

Renewal Option(s) Term: Two (2) two-year renewal options, exercisable at the sole discretion of DOT

Total Potential Term: Nine (9) Years

☐ * >20 years – FCRC unanimously approved term on __/__/__

ANNUAL REVENUE

(Check all that apply)

☐ Additional sheet (☐s) attached

☐ Annual Fee(s) \$ _____

☐ % Gross Receipts _____%

☐ The Greater of Annual Minimum Fee(s) of \$_____ v. _____% of Gross Receipts

☒ Other Open Space Alliance will be required to invest any revenue generated by this concession into the maintenance, repair and/or improvement, including reasonable administrative costs, of the Licensed Plaza.

NOTIFICATION REQUIREMENTS

Subject concession was awarded by CSB or CSP.

☐ YES ☒ NO

If YES, check the applicable box(es) below:

☐ The subject concession is a Significant Concession and the Agency completed its consultations with each

affected CB/BP regarding the scope of the solicitation by __/__/__, which was at least 30 days prior to its issuance.

- ☐ The subject concession is a Significant Concession and the Agency included this concession in the Agency's Plan and completed consultations with each affected CB/BP pursuant to §1-10 of the Concession Rules.
- ☐ The subject concession was determined not to be a Major Concession and the Agency sent notification of such determination to each affected CB/BP by __/__/__, which was at least 40 days prior to issuance of the solicitation.

If **NO**, check the applicable box below:

- ☒ The Agency certifies that each affected CB/BP received written notice by 01/29/10, which was at least 40 days in advance of the FCRC meeting on 04/14/10 at which the agency sought and received approval to use a different selection procedure.
- ☐ The Agency certifies that each affected CB/BP received written notice on __/__/__, at the time that a notice of intent to enter into negotiations was published for the subject concession, and provided a copy of such notification to the members of the Committee within five days on __/__/__.
- ☐ The Agency certifies that based on exigent circumstances the FCRC unanimously approved waiver of advance written notice to each affected CB/BP on __/__/__.

Law Department approved concession agreement on __/__/__

Award is a major concession.

☐ YES ☒ NO

If YES, award was approved pursuant to Sections 197-c and 197-d of the NYC Charter as follows:

☐ CPC approved on __/__/__ ☐ City Council approved on __/__/__ or ☒ N/A

AUTHORIZED AGENCY STAFF

This is to certify that the information presented herein is accurate and that I find the proposed concessionaire to be responsible and approve of the award of the subject concession agreement.

If the concession was awarded by other than CSB or CSP, additionally check the applicable box below:

- ☐ The concession was approved by the FCRC on __/__/__.
- ☐ The concession was not subject to the approval of the FCRC because it has a term of <30 days and is not subject to renewal.

Name _____ Title _____

Signature _____ Date __/__/__

CERTIFICATE OF PROCEDURAL REQUISITES

This is to certify that the agency has complied with the prescribed procedural requisites for award of the subject concession agreement.

Signature _____ Date __/__/__

City Chief Procurement Officer

RECOMMENDATION FOR AWARD OF CONCESSION AGREEMENT MEMORANDUM:
CONCESSION AGREEMENT AWARDED BY OTHER THAN CSB OR CSP

SUMMARY OF PROPOSED CONCESSION USE (Attach Proposed Agreement)

The New York City Department of Transportation ("DOT") intends to seek FCRC approval to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York ("Concession Rules"), to enter into a License Agreement ("Agreement") with the Open Space Alliance for North Brooklyn, Inc. ("Open Space Alliance").

Instructions: *Provide all information requested below; check all applicable boxes.*

A. SELECTION PROCEDURE

☐

Sole Source

☒

Other *Describe:*

The Open Space Alliance was selected through DOT's Plaza Program, a competitive application process. To be eligible, applicants must operate within the City of New York and must be incorporated in New York State and must have a mission that serves or relates to the geographical areas of the proposed pedestrian plaza. Applicants are required to submit the following: completed application form, list of names and titles of the applicants' employees who work in community development, list of names and titles of members of the applicant's Board of Directors or similar governing members, financial information based on the applicant's operating budget, at least eight letters of support from community stakeholders, and three photographs of the site proposed to be a pedestrian plaza.

DOT reviews and evaluates the applications based on the following criteria: open space, community initiative, site context, organizational and maintenance capacity, and income eligibility.

Details of DOT's Plaza Program, including application materials and program guidelines, are posted to DOT's website and shared across existing communication networks via Borough Commissioner's Offices, Community Boards, Elected Officials, existing program partners and sister agencies such as the Department of Small Business Services. Once application materials are publically available DOT then typically hosts information sessions for prospective program partners in each of the five boroughs.

Open Space Alliance submitted an application and supporting documentation for this proposed pedestrian plaza. No other organizations submitted an application for this same pedestrian plaza. DOT reviewed Open Space Alliance's submission, including whether the proposed pedestrian plaza and Open Space Alliance met the following criteria: open space, community initiative, site context, organizational and maintenance capacity, and income eligibility. After review, DOT determined that this criteria was met and it selected Open Space Alliance for the operation, management, and maintenance of this proposed pedestrian plaza.

B. NEGOTIATIONS

Instructions: *Describe the nature of negotiations conducted, including negotiations with respect to the amount of revenue offered.*

The Agreement would permit Open Space Alliance to operate, manage and maintain a pedestrian plaza located on Union Avenue between North 10th Street and North 12th Street in the borough of Brooklyn ("Licensed Plaza"), including through DOT-approved events, sponsorships and subconcessions, including but not limited to providing for the sale of any of the following: prepared food, flowers, locally grown

produce or locally manufactured products, merchandise (such as souvenirs or T-shirts) that helps brand or promote the neighborhood or Open Space Alliance, and other similar merchandise within the Licensed Plaza. The Agreement provides for one (1) five-year term, commencing upon written Notice to Proceed, with two (2) two-year renewal options, exercisable at the sole discretion of DOT. Open Space Alliance will be required to invest any revenue generated by this concession into the maintenance, repair and/or improvement, including reasonable administrative costs, of the Licensed Plaza.

It should be noted that while the initial term and the potential total length of the renewals is the same as the term referenced in the resolution authorizing DOT to utilize a different procedure previously adopted by the FCRC, the renewals were changed from four (1) year renewals to two (2) year renewals during negotiation of the Agreement with Open Space Alliance.

- C. **BASIS FOR AWARD** (If sole source award, attach the offer; if other than a sole source award, attach the three highest rated offers, if applicable.)

The agency determined that award of the concession is in the best interest of the City because:

Since the concession will not yield a profit to Open Space Alliance it is in the City's best interest to enter into a an agreement with Open Space Alliance using a different procedure pursuant to Section 1-16 of the Concession Rules because this not-for-profit organization's mission is to maintain, activate, enhance and expand public spaces in the neighborhood in which the Licensed Plaza is located. This organization directly represents the neighborhood that it will serve and has a vested interest in the Licensed Plaza.

Additionally, Open Space Alliance met the selection requirements of DOT's Plaza Program.

- D. **PUBLIC HEARING** ☒ **N/A – Subject award NOT a significant concession]**

1. Publication & Distribution of Public Hearing Notice

- ☐ Subject concession is a **Citywide** concession and Agency hereby certifies that a notice containing a summary of the terms and conditions of the proposed concession and stating the time, date and location of the public hearing was published once in the City Record on ___/___/___, which was not less than 15 days prior to the hearing date or a shorter period approved by the CCPO and was given to each affected CB-BP and the Committee Members on ___/___/___, which was not less than 15 days prior to the hearing date. Agency also published a public hearing notice twice in the two newspapers indicated below. A copy of each such notice was sent to each affected CB-BP by ___/___/___.

- ☐ _____, a NYC citywide newspaper on ___/___/___ and ___/___/___
☐ _____, a NYC citywide newspaper on ___/___/___ and ___/___/___

OR

- ☐ Subject concession is **NOT a Citywide** concession and Agency hereby certifies that a notice containing a summary of the terms and conditions of the proposed concession and stating the time, date and location of the public hearing was published once in the City Record on _____, which was not less than 15 days prior to the hearing date or a shorter period approved by the CCPO and was given to each affected CB-BP and the Committee Members on _____ which was not less than 15 days prior to the hearing date. Agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement twice in two newspapers indicated below. A copy of each such notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB-BP by_____.

☐ _____
☐ _____

2. Public Hearing Date, Exception to Public Hearing Requirement

☐ A Public Hearing was conducted on _____.

OR

☐ The Agency certifies that the total annual revenue to the City from the subject concession does _____ not exceed one million dollars and a Public Hearing was not conducted because, pursuant to _____ §1-13(q)(2) of the Concession Rules, the Agency gave notice of the hearing and did not receive _____ any written requests to speak at such hearing or requests from the Committee that the Agency _____ appear at the hearing. Furthermore, the Agency certifies that it published a notice in the City _____ Record canceling such hearing on____/____/____ and sent a copy of that notice to all Committee _____ Members.

THIS LICENSE, made as of _____, 20__ between and among the City of New York (the "City"), a municipal corporation of the State of New York, acting by and through the New York City Department of Transportation ("DOT"), and Open Space Alliance for North Brooklyn, Inc. ("PLAZA PARTNER"), a New York not-for-profit corporation.

WITNESSETH

WHEREAS, DOT is charged with the responsibility for the construction, maintenance and repair of streets pursuant to Section 2903 of the New York City Charter; and

WHEREAS, PLAZA PARTNER was formed in 2003 to improve and enhance open space in North Brooklyn in the borough of Brooklyn, City and State of New York ("North Brooklyn Area"), including but not limited to the improvement and maintenance of public space therein; and

WHEREAS, PLAZA PARTNER applied to DOT's plaza program in 2014 and proposed a site for a pedestrian plaza. DOT selected the site, which is located on Union Avenue between North 12th and North 10th Streets, Brooklyn, New York ("Licensed Plaza"). The Licensed Plaza consists of six separate non-contiguous areas as illustrated in **Exhibit A**; and

WHEREAS, DOT has jurisdiction over the Licensed Plaza and designated the Licensed Plaza as a DOT Pedestrian Plaza pursuant to section 19-157 of the New York City Administrative Code.

WHEREAS, the City, at its sole cost and expense, designed and constructed the Licensed Plaza, which shall include the installation of certain amenities within the Licensed Plaza, as more particularly described in **Exhibit B**; and

WHEREAS, the City desires to encourage the participation of interested organizations in providing supplemental services, including maintenance and public programming, for the benefit of the public; and

WHEREAS, PLAZA PARTNER and DOT desire to work cooperatively to improve and maintain the Licensed Plaza; and

WHEREAS, PLAZA PARTNER has experience performing maintenance activities in the North Brooklyn Area; and

WHEREAS, PLAZA PARTNER has strong relationships with local businesses, community boards and other local organizations, providing meaningful input on the programs and operation of the North Brooklyn Area; and

WHEREAS, PLAZA PARTNER is willing to perform responsibilities associated with the improvement, maintenance and repair of the Licensed Plaza for the benefit of the public; and

WHEREAS, DOT recognizes that by providing the maintenance and repair of the Licensed Plaza, PLAZA PARTNER will be significantly assisting DOT's plaza program; and

WHEREAS, the Franchise and Concession Review Committee ("FCRC") authorized DOT to enter into a License Agreement with PLAZA PARTNER, to provide for the operation, management and maintenance of the Licensed Plaza, including through DOT-approved events, sponsorships and subconcession(s), including but not limited to providing for the sale of any of the following: prepared food, flowers, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts) that helps brand or promote the neighborhood or PLAZA PARTNER, and other similar merchandise ("Subconcession(s)") within the Licensed Plaza.

NOW THEREFORE, in consideration of the mutual covenants herein, the parties agree as follows:

1. SCOPE OF LICENSE

A. DOT hereby grants to PLAZA PARTNER and PLAZA PARTNER hereby accepts from DOT this non-exclusive License to operate, manage and maintain the Licensed Plaza (any reference to the Licensed Plaza herein shall include the Subconcession(s), unless otherwise stated). Notwithstanding the foregoing sentence, DOT will not grant a concession License to any other party to operate, manage and maintain the Licensed Plaza while this License is in effect. PLAZA PARTNER shall provide, or cause to be provided, services for the maintenance, repair and/or improvement of the Licensed Plaza to the reasonable satisfaction of the DOT ("Services"). Such Services shall include keeping and maintaining the Licensed Plaza in good condition and repair, all in accordance with the provisions of this License and as more fully provided in Section 3.

B. As more particularly set forth in this License, PLAZA PARTNER shall be permitted to:

- (1) enter into an agreement(s) for the operation of Subconcession(s);
- (2) accept gifts and sponsorships; and
- (3) hold Special Events at the Licensed Plaza pursuant to Section 8 herein.

C. As more fully provided in Section 5 below, any revenue received from the management and operation of the Licensed Plaza shall be used by PLAZA PARTNER for Services at the Licensed Plaza.

D. PLAZA PARTNER shall, or shall require its subconcessionaire(s) to obtain any and all approvals, permits, and other licenses required by federal, state and City laws, rules, regulations and orders which are or may become necessary for the operation and maintenance of the Licensed Plaza in accordance with the terms of this License. Whenever any act, consent,

approval or permission is required of the City, DOT or the DOT Commissioner under this License, the same shall be valid only if it is, in each instance, in writing and signed by the DOT Commissioner or his/her duly authorized representative, and such approval or permission shall not be unreasonably withheld or delayed. No variance, alteration, amendment, or modification of this instrument shall be valid or binding upon the City, DOT, the DOT Commissioner or their agents, unless the same is, in each instance, in writing and duly signed by the DOT Commissioner or his/her duly authorized representative.

E. It is expressly understood that no land, building, space, improvement, or equipment is leased to PLAZA PARTNER, but that during the term of this License, as defined herein, PLAZA PARTNER and its subconcessionaire(s) shall have the non-exclusive use of the Licensed Plaza for the purpose herein provided. Except as herein provided, PLAZA PARTNER and its subconcessionaire(s) have the right to occupy and operate the Licensed Plaza only so long as each and every term and condition in this License is properly complied with and so long as this License is not terminated by the DOT in accordance with this License.

2. TERM

A. The term of this License ("Term") shall be five (5) years, commencing upon written Notice to Proceed ("Commencement Date"). This License may be renewed for two (2) additional two-year terms, to be exercised at the sole discretion of DOT subject to termination and revocation as hereinafter provided. DOT shall provide PLAZA PARTNER with sixty (60) days' advance written notice of its intent to renew.

B. Notwithstanding any other termination provision of this License, this License is terminable at will any time by DOT upon twenty-five (25) days written notice to PLAZA PARTNER.

3. SERVICES

A. PLAZA PARTNER shall cause the Licensed Plaza to be improved and/or maintained for the benefit of the public, with certain amenities within the Licensed Plaza, as more particularly described in **Exhibit B**, which may be amended from time to time upon mutual consent of the parties.

(1) If the PLAZA PARTNER plans to significantly improve the Licensed Plaza, PLAZA PARTNER shall submit to DOT such plans for its prior written approval. The significant improvement plans shall include a detailed description of the proposed improvements, a cost breakdown, drawings/schematics of the proposed improvements and any other documentation that DOT requests relevant to the proposed improvements.

B. PLAZA PARTNER shall provide or cause to be provided the maintenance and repair of the Licensed Plaza in accordance with the standards set forth in this Section to the reasonable satisfaction of DOT. All such maintenance and repair shall be performed in a good and workmanlike manner.

(1) Cleaning/Trash Removal:

(a) Dirt, litter and obstructions shall be removed, and trash and leaves collected and removed so as to maintain the Licensed Plaza in a clean, neat and good condition.

(b) All walkways, sidewalks and all other improvements and facilities in the Licensed Plaza shall be routinely cleaned and maintained so as to keep such improvements and facilities in a clean, neat and good condition.

(c) Graffiti shall be regularly painted over or removed, within a reasonable and timely manner after its appearance on any surface.

(d) Drains, sewers, and catch basins shall be cleaned regularly to prevent clogging.

(e) Planters and planting beds shall be free of litter and debris.

(f) Any umbrellas, moveable tables and chairs (“Moveable Street Furniture”) shall be cleaned and maintained as reasonably necessary.

(g) All other amenities listed in **Exhibit B**, as may be amended from time to time upon mutual consent of the parties, shall be cleaned and maintained as reasonably necessary.

(h) Perimeter planters used to delineate traffic shall not be moved without DOT’s prior written approval. Such approval or denial shall not be unreasonably delayed. If a perimeter planter is moved by a third party, PLAZA PARTNER shall return the perimeter planter(s) to its original position as soon as practicable and thereafter shall immediately notify DOT.

(2) Snow Removal:

(a) Snow and ice shall be removed from all walkways within a reasonable period of time after each snowfall or accumulation of ice, so as not to interfere with safe passage. If necessary, Moveable Street Furniture shall be removed from the Licensed Plaza due to such snow and/or ice conditions.

(b) Sand or snow melting agent shall be spread as needed to minimize slippery conditions which may arise from the thawing and refreezing of snow and/or ice.

(c) Signs shall be posted throughout the Licensed Plaza cautioning users of any dangerous conditions due to snow and/or ice. If necessary, the Licensed Plaza may be closed due to such snow and/or ice conditions.

(3) Landscape Maintenance:

(a) Water all trees, shrubs, plantings and grass-covered areas as necessary to maintain such vegetation in a healthy condition.

(b) Re-seed and/or re-sod grass-covered areas as needed.

(c) Remove or destroy any weeds from paving blocks, pavement, and concrete areas.

(d) Seasonal or annual planting of varied plant life, including some flowering plants, such that at no time are planters or planting beds empty of plant life.

(e) Seasonal or annual pruning.

(f) To the extent that PLAZA PARTNER applies pesticides to the Licensed Plaza, PLAZA PARTNER or any subcontractor, shall comply with Title 17 of Chapter 12 of the New York City Administrative Code.

(4) Repairs shall include, but are not be limited to, the following:

(a) Benches or other seating: Replace broken or missing bench slats and paint benches, as needed. Repair and/or replace damaged benches or other seating as needed.

(b) Moveable Street Furniture: All Moveable Street Furniture shall be repaired and/or replaced as needed within a reasonable time and maintained in good condition.

(c) Pavements: All paved surfaces shall be repaired and/or replaced as needed and maintained in a safe and attractive condition.

(d) Facilities: All facilities, equipment, and concessions areas that are located in the Licensed Plaza shall be maintained in good condition and good working order at all times.

(e) Painting: All items with painted surfaces shall be painted as needed. Surfaces shall be scraped free of rust or other extraneous matter and painted to match the existing color.

(f) Planters: All planters shall be repaired and/or replaced as needed within a reasonable time. All planters shall be maintained in good condition.

C. The public shall have free and open access to the seating areas within the Licensed Plaza unless otherwise precluded by a DOT-approved Special Event as set forth in Section 8 of this License or other City-approved events.

- D. PLAZA PARTNER must comply with all recycling regulations and must obtain any and all additional permits required by law.
- E. PLAZA PARTNER shall not allow its employees, agents, contractors and subconcessionaire(s) to emit loud noise, smoke, vapor or offensive odor from the Licensed Plaza.
- F. Advertising (other than in a form identifying PLAZA PARTNER with approval from DOT) is strictly prohibited. Sponsor recognition may be permitted subject to DOT approval. Such approval or denial shall not be unreasonably delayed.
- G. PLAZA PARTNER shall pay all charges for sewer, water, gas, heat, electricity, cable, broadband, and telephone used by its employees, agents, contractors and subconcessionaire(s) at the Licensed Plaza and shall procure at PLAZA PARTNER's own cost and expense all meters, permits, approvals and licenses necessary to effectuate the requirements of this Section. PLAZA PARTNER shall be responsible for the installation of all necessary water, gas, heat, electricity, cable, broadband, and telephone connections. The PLAZA PARTNER shall not accept any money, commission, premium, bonus or other consideration from any person for the use or sale of utility services.
- H. PLAZA PARTNER shall perform maintenance and repair activities to the reasonable satisfaction of DOT.
- I. PLAZA PARTNER shall prepare and provide to DOT reports of any accidents or other incidents, if known, occurring at the Licensed Plaza, including the Subconcession(s), on a regular basis and in a format reasonably acceptable to DOT.
- (1) PLAZA PARTNER and its subconcessionaire(s) shall promptly notify DOT, in writing, of any claim for injury, death, property damage or theft which may be asserted against PLAZA PARTNER or its subconcessionaire(s) with respect to the Licensed Plaza and the Subconcession(s).
- (2) PLAZA PARTNER and its subconcessionaire(s) shall promptly notify DOT, in writing, of any unusual conditions that may develop in the course of the operation of the Subconcession(s) such as, but not limited to, fire, flood, casualty and substantial damage of any kind and PLAZA PARTNER shall also notify DOT to the extent it is aware of any such unusual conditions.
- (3) PLAZA PARTNER shall with respect to the maintenance and management of the Licensed Plaza, and shall require its subconcessionaire(s) with respect to the operation and management of the Subconcession(s), designate a person to handle all claims for loss or damage including all insured claims for loss or damages. PLAZA PARTNER shall provide DOT with the name, telephone number and address of each such person, within thirty (30) days of the date of this License and any subconcession agreement(s).

J. PLAZA PARTNER shall periodically inspect the Licensed Plaza for hazardous conditions and shall, without delay upon learning of the condition, report and cause to be repaired any portion or feature of the Licensed Plaza that exhibits defects or hazardous conditions, and shall immediately institute appropriate measures to protect the public from harm, including but not limited to the erection of warning signs and temporary barriers. With respect to conditions for which PLAZA PARTNER is not responsible, PLAZA PARTNER shall, without delay upon learning of the condition, report the need for repairs to DOT.

4. BUDGET

A. On or before April 1st of each year the License is in effect, PLAZA PARTNER shall submit its annual budget relating to the Licensed Plaza to DOT for review and approval. For accounting purposes, the fiscal year shall run from July 1st to June 30th. Notwithstanding the above, the Licensed Plaza budget for fiscal year 2018 shall be submitted within thirty (30) days of the Commencement Date.

B. The PLAZA PARTNER Licensed Plaza budget shall set forth in reasonable detail the amounts proposed to be allocated for the operation, management and maintenance of the Licensed Plaza, including but not limited to the Services described herein and reasonable administrative costs, including but not limited to a list of all personnel salaries or a portion thereof, reflecting their work performed as it relates to the Licensed Plaza.

C. The PLAZA PARTNER Licensed Plaza budget shall not be final until DOT provides written approval. Such approval or denial shall occur within 30 days from the date the budget is submitted. However, DOT will endeavor to respond within 10 business days from the date the budget is submitted.

D. Upon DOT's request, PLAZA PARTNER shall furnish DOT with bills, invoices, labor time books and such other supporting documents or other data as DOT deems necessary.

5. REVENUE

A. "Revenue" shall mean the aggregate amount of all income, receipts and other sums from whatever source derived and without any deduction whatsoever for expenses or costs, as determined in accordance with generally accepted accounting principles, on an accrual basis, paid or obligated to be paid, directly or indirectly, to PLAZA PARTNER, its subconcessionaire(s) or any third parties directly or indirectly retained by PLAZA PARTNER to generate revenue as a result of the maintenance, operation and management of the Licensed Plaza. In addition to any Revenue generated in the form of monetary receipts, Revenue shall be deemed to include the fair market value of any non-monetary consideration in the form of materials, services or other benefits, tangible or intangible, or in the nature of barter PLAZA PARTNER may receive.

(1) In the event that the non-monetary consideration received is from a sponsor of a sponsored event and is for such event, the value of such non-monetary consideration shall not be considered Revenue provided it is not useable in the performance of any of the Services. For example, if such non-monetary consideration is a tent for an event, it shall not count as Revenue; if such non-monetary consideration is landscape maintenance, it shall count as Revenue. Notwithstanding the foregoing, the value of such non-monetary consideration shall be accounted for in all financial reports, audits, statements, records and accounts as required under the provisions of this License.

(2) In the event that any other non-monetary considerations are received, PLAZA PARTNER may submit a request to DOT for the exclusion of such other non-monetary consideration from the Revenue. Such case by case approval or denial shall be at DOT's sole discretion and shall not be unreasonably delayed. Any other PLAZA PARTNER funds not directly generated as a result of the maintenance, operation and management of the Licensed Plaza, including but not limited to general sponsorships, but used for the benefit of the City and Licensed Plaza shall be considered Revenue.

(3) PLAZA PARTNER shall not divert or recharacterize revenue that would otherwise have been considered Revenue for the purposes of this License.

B. PLAZA PARTNER shall apply any Revenue received from its subconcessionaire(s) in relation to the operation of the Subconcession(s) towards the Services.

C. PLAZA PARTNER shall apply any Revenue received by it from any Special Events, sponsorships and/or gifts as contemplated in this License towards the Services.

D. Subject to paragraph (E) below, in no event shall the total annual Revenue from managing and operating the Licensed Plaza during the Term of the License exceed the cost of providing the Services and reasonable administrative costs.

E. At the end of each fiscal year in which the License is in effect, provided that there are no outstanding accounts payables for the fiscal year, any unexpended Revenue will be deposited into a segregated interest bearing accrual fund ("Accrual Fund"). PLAZA PARTNER may use funds in the Accrual Fund for any shortfall in Revenue needed to provide the Services and/or Alterations set forth herein in the year(s) subsequent to its accrual. If at any time during the Term of this License, the Accrual Fund contains an amount that is more than three times the DOT-approved Licensed Plaza budget for the current year, the excess amount of the funds in the Accrual Fund shall be used to provide any Services and/or Alterations in the Licensed Plaza. At the end of the Term of this License or if this License is terminated, the balance, including all accrued interest, if any, of funds in the Accrual Fund shall be used to provide any Services and/or Alterations.

6. SUBCONCESSION(S)

A. PLAZA PARTNER may, subject to DOT's prior approval, enter into a subconcession agreement(s) for the management and operation of the Subconcession(s), which

shall be located in the area described in Exhibit A. Such subconcessionaire(s) shall not be related to or affiliated with PLAZA PARTNER.

B. The subconcession agreement(s) shall be subject to the terms and conditions of this License, and PLAZA PARTNER shall require said subconcessionaire(s) to acknowledge in writing that it received a copy of this License and that it is bound by same.

C. PLAZA PARTNER must issue a public solicitation in the basic form of a Request for Proposals ("RFP") or a Request for Bids ("RFB") approved by DOT to select the entity/entities to operate and manage the Subconcession(s). A minimum of three RFP or RFB submissions must be received to select a subconcessionaire(s), unless DOT agrees to less. This RFP or RFB shall be advertised in the City Record and other appropriate publication(s) approved by DOT. DOT, at its sole option, may be on the RFP evaluation committee.

D. The selection of the entity/entities to operate and manage the Subconcession(s) will be subject to DOT's prior written approval. Such approval or denial shall not be unreasonably delayed. The PLAZA PARTNER shall ensure that the subconcessionaire(s) complete and file VENDEX questionnaires if the aggregate value of City contracts, franchises and concessions awarded that subconcessionaire, including this one, during the immediately preceding twelve-month period equals or exceeds \$100,000 ("Threshold"). Each subconcession agreement(s) shall contain provisions specified in Section 13(B)(5) herein, provided however that such provisions shall pertain to subconcessionaire(s) instead of subcontractor(s).

E. The terms and conditions of the subconcession agreement(s) shall be subject to DOT's approval. Two (2) copies of the proposed subconcession agreement shall be submitted to DOT with PLAZA PARTNER's written request for approval.

F. PLAZA PARTNER shall require its subconcessionaire(s) to indemnify the City and obtain insurance coverage in accordance with the terms and conditions set forth in Sections 11 and 12 herein.

G. The subconcession agreement(s) may not be assigned without the prior written consent of DOT. Any subsequent subconcession agreements will be subject to the terms and conditions set forth in this License.

7. OPERATION OF THE SUBCONCESSION(S)

A. PLAZA PARTNER shall provide for the maintenance, operation and management of the Subconcession(s) through a subconcession agreement(s) and require its subconcessionaire(s), at the subconcessionaire(s)' sole cost and expense, to operate the Subconcession(s) in such manner as DOT shall reasonably prescribe and as permitted by the laws, rules, regulations and orders of government agencies having jurisdiction thereof. PLAZA PARTNER and its subconcessionaire(s) shall accept the Licensed Plaza in its "as-is" condition. PLAZA PARTNER shall require that its subconcessionaire(s) provide the necessary number of

personnel having the requisite skills together with the necessary personal equipment and consumable supplies and shall perform the following services at the Licensed Plaza:

- (1) operate the Subconcession(s) as provided herein; and
- (2) continuously perform such ongoing and preventive maintenance activities necessary to maintain the Subconcession(s) in good order and repair, consistent with Section 3 of this License, and with prevailing professional and industry or trade standards.

B. PLAZA PARTNER shall require its subconcessionaire(s) to submit its proposed hours of operation, a menu (if applicable) and price list, for PLAZA PARTNER's approval. The information submitted to and approved by PLAZA PARTNER by its subconcessionaire(s) shall be provided to DOT within a reasonable time thereafter. However, DOT reserves the right to review and approve such menu (if applicable) and price list at its discretion.

C. PLAZA PARTNER shall or shall require its subconcessionaire(s), at the subconcessionaire(s)'s sole cost and expense, to obtain all licenses and permits that may be required to operate the Subconcession(s) in accordance with applicable rules, laws and regulations.

D. PLAZA PARTNER shall require its subconcessionaire(s), at the subconcessionaire(s)' sole cost and expense, to print, frame, and prominently display the current approved schedule of operating days, hours and prices.

E. On or before the thirtieth (30th) day following the end of each fiscal year, PLAZA PARTNER shall require that its subconcessionaire(s) submit to DOT a statement of Revenue, signed and verified by an officer of subconcessionaire(s), reporting any Revenue generated from the Subconcession(s) during the preceding twelve (12) month period. Notwithstanding the foregoing, PLAZA PARTNER shall require its subconcessionaire(s) to submit to PLAZA PARTNER such statement of Revenue on a monthly basis.

(1) PLAZA PARTNER shall also require that its subconcessionaire(s) submit a report of Revenue for the period since the prior 12-month report on or before the thirtieth (30th) day following the termination of this License or the subconcession agreement(s), or June 30th, whichever is sooner. The obligation to submit a final report of Revenue shall survive the termination of this License or the subconcession agreement(s). These reports submitted to PLAZA PARTNER by its subconcessionaire(s) shall be provided to DOT within a reasonable time thereafter.

(2) PLAZA PARTNER shall require that its subconcessionaire(s) indicate on its statement of Revenue whether or not these amounts are inclusive of sales tax collected.

(3) PLAZA PARTNER shall require in the subconcession agreement(s) that Revenue shall include without limitation all funds received by subconcessionaire(s), without deduction or set-off of any kind, from the sale of food and beverages, wares, merchandise or

services of any kind from the Subconcession(s), provided that Revenue shall exclude the amount of any federal, state or City taxes which may now or hereafter be imposed upon or be required to be collected and paid by subconcessionaire(s) as against its sales. All sales made or services rendered by subconcessionaire(s) from the Subconcession(s) shall be construed as made and completed therein even though payment therefore may be made at some other place. In addition to any Revenue generated in the form of monetary receipts, Revenue shall be deemed to include the fair market value of any non-monetary consideration in the form of materials, services or other benefits, tangible or intangible, or in the nature of barter the subconcessionaire(s) may receive.

(4) Revenue shall include sales made for cash or credit (credit sales shall be included in Revenue as of the date of the sale) regardless of whether the sales are paid or uncollected, it being the intention and agreement of the parties that all sums due to be received by subconcessionaire(s) from all sources from the operation of the Subconcession(s) shall be included in Revenue.

F. PLAZA PARTNER shall require its subconcessionaire(s) to operate its Subconcession(s) in such a manner as to maintain the highest New York City Department of Health inspection rating.

G. PLAZA PARTNER shall require that its subconcessionaire(s) employ an operations manager ("Manager") with appropriate qualifications to manage operations at the Subconcession(s) in a manner that is reasonably satisfactory to DOT. The Manager must be available by telephone during all hours of operation, and PLAZA PARTNER shall continuously notify DOT of a 24-hour pager or cellular telephone number through which DOT may contact the Manager in the event of an emergency. PLAZA PARTNER shall require that its subconcessionaire(s) replace any Manager, employee, subcontractor whenever reasonably demanded by DOT.

H. PLAZA PARTNER shall require its subconcessionaire(s) to provide equipment, which will provide security for all monies received. PLAZA PARTNER shall require that its subconcessionaire(s) provide for the transfer of all monies collected to the subconcessionaire(s)' banking institution. PLAZA PARTNER shall require that its subconcessionaire(s) bear the loss of any lost, stolen, misappropriated or counterfeit monies derived from operations under this License.

I. PLAZA PARTNER shall require that its subconcessionaire(s), at its sole cost and expense, provide, hire, train, supervise, and be responsible for the acts of all personnel necessary for the proper operation of this License, including but not limited to:

- (1) collect and safeguard all monies generated under this License;
- (2) maintain the Subconcession(s) in accordance with this License;

(3) conduct and supervise the provision of qualified Subconcession(s) personnel and cashier(s); and

(4) secure the Subconcession(s).

J. PLAZA PARTNER shall require that its subconcessionaire(s), at the subconcessionaire(s)' sole cost and expense, obtain sound permits and provide any lighting, which it determines may be necessary to operate the Subconcession(s).

K. PLAZA PARTNER shall require that its subconcessionaire(s), in operating the Subconcession(s), maintain the sound level of all events and activities at an appropriate level to prevent an unreasonable nuisance to neighbors living and working near the Subconcession(s).

L. Installation of additional fixed lighting or fixed sound equipment by either PLAZA PARTNER or its subconcessionaire(s) on the Subconcession(s) shall require the prior written approval of DOT.

M. PLAZA PARTNER shall require that its subconcessionaire(s) provide access up to the Subconcession(s) to disabled members of the public as required by law. This accessibility shall be clearly indicated by signs.

N. PLAZA PARTNER shall require its subconcessionaire(s), at its sole cost and expense, to provide a twenty-four (24) hour per day security system at the Subconcession(s), if appropriate, which shall be either an electronic security system, or a twenty-four hour unarmed guard, or both. PLAZA PARTNER shall require that its subconcessionaire(s) be responsible for securing the Subconcession(s) and any other equipment used immediately upon closing each day in a manner reasonably approved by DOT.

O. DOT shall have the right to reasonably approve the days and times on which deliveries to PLAZA PARTNER's subconcessionaire(s) may be made. Such approval or denial will not be unreasonably delayed.

P. It is expressly understood that if PLAZA PARTNER or its subconcessionaire(s) contemplates placing any signs off-site that advertise the Subconcession(s), such as on nearby highways or streets, it shall be PLAZA PARTNER's or its subconcessionaire(s)'s responsibility to obtain any necessary approvals or permits from any governmental agency having jurisdiction over such highways, streets or locations. The design and content of all such signs are subject to DOT's reasonable prior approval.

Q. The siting of the Subconcession(s) shall be arranged so that pedestrian traffic and the site lines of motorists are not unreasonably inhibited.

R. The sale of cigarettes, cigars, or any tobacco product is strictly prohibited. Additionally, the sale of electronic cigarettes is strictly prohibited.

S. PLAZA PARTNER may permit its subconcessionaire(s) to sell wine and beer only with the appropriate license from the State Liquor Authority (“SLA”). Such wine and beer shall be served in recyclable cups and be consumed only within the boundaries of the Licensed Plaza, as permitted by the SLA.

T. No trucks or storage containers may be stationed at the Subconcession(s) or Licensed Plaza, unless otherwise approved by DOT.

U. PLAZA PARTNER shall require its subconcessionaire(s) to maintain trash receptacles and separate receptacles for recyclable materials and comply with all recycling regulations at its sole cost and expense, arrange for the removal, by a duly licensed private carter, of all refuse relating to the Subconcession(s), including but not limited to trash, boxes and trade waste.

V. (1) PLAZA PARTNER, at its sole cost and expense, shall or shall cause its subconcessionaire(s) to design, fabricate, construct and install the Subconcession(s) subject to DOT’s prior written approval. Upon installation, title to all construction, renovation, improvements, and fixtures made to the Subconcession(s) shall vest in and thereafter belong to the City at the City’s option, which may be exercised at any time after the substantial completion of the construction, renovation, improvement, affixing, placement or installation. To the extent the City chooses not to exercise its option with respect to any of the construction, renovation, improvements, equipment or fixtures made to the Subconcession(s), it shall be the responsibility of PLAZA PARTNER to remove such items after the expiration or termination of this License and restore the Licensed Plaza to its original state, normal wear and tear excepted and to the reasonable satisfaction of DOT at the sole cost and expense of PLAZA PARTNER.

(2) PLAZA PARTNER shall use its best efforts to minimize the extent to which the public use of the Licensed Plaza is disrupted in connection with its construction, installation, operation and maintenance activities at the Licensed Plaza.

(3) PLAZA PARTNER shall or shall cause its subconcessionaire(s) to pay all applicable fees and shall submit to DOT and all other governmental agencies having jurisdiction, for prior approval, all plans, specifications, schematics, working and mechanical drawings which shall be signed and sealed by a New York State Registered Architect or Licensed Professional Engineer. All plans, specifications, schematics, and working and mechanical drawings shall be in such detail as DOT shall require. All work shall be undertaken in accordance with the plans, specifications, schematics, and working and mechanical drawings approved in writing in advance by DOT.

(4) PLAZA PARTNER shall or shall cause its subconcessionaire(s) to apply for and obtain all applicable licenses and permits prior to the commencement of any work. Further, all designs will require prior approval from DOT and any other agencies having jurisdiction, including but not limited to the Public Design Commission of the City of New York.

(5) During the term of this License, PLAZA PARTNER shall or shall cause its subconcessionaire(s) to be responsible for the protection of the Subconcession(s), whether or not construction is complete, against any damage, loss or injury. In the event of such damage,

loss or injury, PLAZA PARTNER shall promptly replace or repair the Subconcession(s) at its sole cost and expense.

(6) PLAZA PARTNER shall or shall cause its subconcessionaire(s) to construct the Subconcession(s) in accordance with all federal, state, and City laws, rules, regulations, orders, and industry standards, and with materials as set forth in the approved plans, specifications, schematics, working and mechanical drawings. All equipment and materials installed shall be new, free of defects, of the best grade quality, suitable for the purpose intended and furnished in ample quantities to prevent delays. PLAZA PARTNER shall obtain all manufacturers' warranties and guarantees for all such equipment and materials, as applicable.

(7) As required by Section 24-216 of the New York City Administrative Code, devices and activities which will be operated, conducted, constructed or manufactured pursuant to this License and which are subject to the provisions of the New York City Noise Control Code (the "Code") shall be operated, conducted, constructed or manufactured without causing a violation of such Code. Such devices and activities shall incorporate advances in the art of noise control developed for the kind and level of noise emitted or produced by such devices and activities, in accordance with regulations issued pursuant to federal, state, City laws, rules, regulations and orders.

(8) PLAZA PARTNER shall provide written notice to DOT when the Subconcession(s) is substantially completed, and DOT shall inspect the Subconcession(s) within a reasonable time after receipt of such notice from PLAZA PARTNER. After such inspection, DOT and PLAZA PARTNER shall jointly develop a single final "punch list" incorporating all findings from such inspection concerning all work not completed to the satisfaction of DOT. PLAZA PARTNER shall proceed with diligence to complete all "punch list" items within a reasonable time as determined by DOT.

(9) In the event that PLAZA PARTNER fails to comply with any phase of the construction of the Subconcession(s) for a period of thirty days following written notice to cure, DOT may terminate this License by giving ten days written notice of termination.

(10) PLAZA PARTNER shall provide DOT with discharges for any and all liens which may be levied against the Subconcession(s) during construction of such improvements. PLAZA PARTNER shall use its best efforts to discharge such liens within thirty business days of receipt of lien by PLAZA PARTNER.

(11) PLAZA PARTNER shall promptly repair, replace, restore, or rebuild as DOT reasonably may determine, defects of materials, workmanship or design which may appear or to which damages may occur because of such defects, during the one year period subsequent to the date of the final completion.

(12) PLAZA PARTNER shall keep DOT fully informed of PLAZA PARTNER's progress in the construction of the Subconcession(s).

(13) All risks of construction of the Subconcession(s) are hereby expressly assumed by PLAZA PARTNER except as may be specifically provided otherwise herein. The Subconcession(s) will be designed, constructed, maintained, secured and insured entirely at PLAZA PARTNER's expense without reimbursement by DOT or credit or offset of any kind for cost overruns or otherwise, and PLAZA PARTNER shall pay all municipal fees and impositions in connection therewith.

W. The City shall own any copyrights, trademarks, logos and brands developed in association with the management and operation of the Subconcession(s) by PLAZA PARTNER and its subconcessionaire(s), that include the name of the Licensed Plaza or is directly associated with the Licensed Plaza. However, the City shall not own:

(1) any portion of a name that consists of the name, portrait or signature of a living or deceased individual; or

(2) a restaurant identifier or trade name that is not otherwise associated with the Licensed Plaza.

X. Smoking of cigarettes or any other tobacco product is strictly prohibited at the Licensed Plaza in accordance with Local Law 11 of 2011. Using electronic cigarettes is also prohibited at the Licensed Plaza in accordance with Local Law 152 of 2013.

8. SPECIAL EVENTS AND REVENUE

A. The Licensed Plaza may be used for Special Events (as defined herein), subject to the terms and conditions set forth herein.

B. PLAZA PARTNER shall submit, for DOT's review and comment, any program activities proposed to be held at the Licensed Plaza by the PLAZA PARTNER, or any program activities proposed to be held at the Licensed Plaza that are sponsored or permitted by the PLAZA PARTNER, including, but not limited to those that promote cultural, public or historical events/activities that foster tourism and/or enhance the image of the City and/or the surrounding neighborhood ("Special Events"), such as temporary art installations consistent with DOT's Urban Art Program; and, pursuant to the applicable rules of the Street Activity Permitting Office ("SAPO"), the City's Office of Citywide Event Coordination and Management ("CECM") shall coordinate such programming.

C. PLAZA PARTNER may hold Special Events at the Licensed Plaza subject to:

(1) a recommendation from DOT to SAPO that PLAZA PARTNER be allowed to hold the proposed Special Event;

(2) the City's and DOT's right to use the Licensed Plaza for its own Special Events or programming or authorize others to use the Licensed Plaza;

(3) PLAZA PARTNER obtaining any necessary City authorization, approvals, permits, and compliance with other processes that may be necessary, including without limitation PLAZA PARTNER obtaining the applicable SAPO permit;

(4) PLAZA PARTNER shall be responsible for the payment of all SAPO permit fees in connection with Special Events;

(5) all such Special Events shall be open to the public and at no cost; and

(6) PLAZA PARTNER understands that the Licensed Plaza is public property and that activities at the Licensed Plaza are subject to the First Amendment of the U.S. Constitution and Article I of the New York State Constitution. Therefore: (a) PLAZA PARTNER acknowledges that First Amendment activities may be permitted by SAPO for the Licensed Plaza; and (b) PLAZA PARTNER shall refer to SAPO applications made to PLAZA PARTNER for any activity on the Licensed Plaza that may be protected by the First Amendment.

C. PLAZA PARTNER shall provide DOT with no less than thirty (30) days' (or such lesser period as shall be acceptable to DOT) prior written notice of any proposed Special Events.

D. The City may use the Licensed Plaza for Special Events, including, but not limited to exhibits, art programs, and other free cultural events open to the public. In the event that DOT or any other agency of the City intends to utilize the Licensed Plaza for any event, it shall coordinate such use with PLAZA PARTNER and shall use reasonable efforts to provide PLAZA PARTNER with thirty (30) days prior written notice of such event. .

E. PLAZA PARTNER shall pay for, or cause to be paid any and all fees or royalties to ASCAP, BMI or such entities as may be required for any music or music programming during its events, and DOT shall pay for any such fees or royalties relating to DOT's events.

F. Any sign posted by PLAZA PARTNER or its subconcessionaire(s) at the Licensed Plaza in connection with a Special Event, shall be appropriately located, and shall state that the Licensed Plaza is a New York City municipal concession operated by PLAZA PARTNER.

G. PLAZA PARTNER may collect a concession fee from the event sponsor or holder, in addition to the SAPO permit fee collected by CECM, for any commercial/promotional events (as defined in Title 50 of the Rules of the City of New York) held at the Licensed Plaza. These fees shall be included as part of PLAZA PARTNER's Revenue pursuant to Section 5 of this License. Such fees shall be set forth in attached **Schedule A**, which may be amended from time to time upon mutual consent of the parties.

9. SPONSORSHIPS AND GIFTS

A. DOT may, in its discretion, permit PLAZA PARTNER to accept sponsorships and gifts solely for the benefit of the City and the Licensed Plaza. As set forth in Section 5(C), such sponsorships and gifts shall be considered Revenue. Sponsorships and gifts generated for the general benefit of the PLAZA PARTNER shall not be subject to DOT approval. However, if portions of such general sponsorships and/or gifts are for the benefit of the City and Licensed Plaza, those portions thereof shall be included in the Revenue and shall be subject to the provisions of this Section 9. Any such sponsorships and/or gifts shall be restricted in size, quantity and location as deemed appropriate by DOT.

B. PLAZA PARTNER shall provide DOT with no less than thirty (30) days (or such lesser period as shall be acceptable to DOT) prior written notice of any such proposed sponsorships and/or gifts.

C. The parties hereto agree that no writing, posters, plaques or banners shall be placed at the Licensed Plaza at any time, without DOT's prior written consent. It is expressly agreed that commemorative plaques and banners shall be erected in conformance with all applicable rules.

D. PLAZA PARTNER shall not place or allow the placement of any notice or sign in or on the Licensed Plaza without DOT's written consent. PLAZA PARTNER, upon twenty-four (24) hours' notice, shall remove any and all unauthorized notice or signage placed in or on the Licensed Plaza. In the case of PLAZA PARTNER's failure to remove any such notice or signage, DOT may remove such notice or signage at PLAZA PARTNER's cost for such removal.

10. INSPECTION AND AUDIT OF RECORDS

A. PLAZA PARTNER agrees that it shall comply with all of the provisions set forth in this Section, and with respect to the operations of the Subconcession(s), it shall incorporate such provisions, appropriately modified to apply to the subconcessionaire(s), into any subconcession agreement(s).

B. PLAZA PARTNER shall establish and maintain accurate records and accounts, in a manner satisfactory to DOT, which sufficiently and properly reflect all Revenue and direct and indirect costs of any nature resulting from PLAZA PARTNER's operations pursuant to this License, and set forth, in a manner satisfactory to DOT, its expenditures in any way connected to PLAZA PARTNER's maintenance responsibilities under this License. Such records and accounts shall conform to generally accepted accounting principles.

C. PLAZA PARTNER shall establish and maintain accurate records and accounts, in a manner satisfactory to DOT, which sufficiently and properly reflect all activities concerning the Accrual Fund subject to section 5(E) above.

D. PLAZA PARTNER will provide notice to DOT of all meetings, hearings, and proceedings of PLAZA PARTNER's Board of Directors related to the operation, management

and maintenance of the Licensed Plaza, and will make available for consultation any of its officers and employees whose work relates to the performance of this License. PLAZA PARTNER also will make available, at its principal place of business, for audit, inspection, or removal of copies by DOT, the Comptroller of the City of New York (“Comptroller”), and/or by a DOT-authorized independent auditor, PLAZA PARTNER's books and records relating to the performance of this License, including, but not limited to:

- (1) all fiscal records, including books, accounts, and canceled checks;
- (2) internal and external audits completed within the last three fiscal years;
- (3) minutes of meetings of the Board of Directors;
- (4) reports of accidents and other incidents;
- (5) programs, research, and other reports and publications in connection with PLAZA PARTNER's responsibilities in the Licensed Plaza pursuant to this License; and
- (6) records of PLAZA PARTNER sponsored programs, and any other matters relating to the performance of and compliance with this License, or with any laws or regulations governing the conduct of PLAZA PARTNER under this License.

E. PLAZA PARTNER shall furnish to DOT a detailed audited financial statement of PLAZA PARTNER related to the operation, management and maintenance of the Licensed Plaza each fiscal year during the Term of this License and any renewals thereof. Such statements shall include in reasonable detail the amounts proposed to be allocated for the operation, management and maintenance of the Licensed Plaza, including but not limited to the Services described herein and reasonable administrative costs, including but not limited to a list of all personnel salaries or a portion thereof, reflecting their work performed as it relates to the Licensed Plaza. Such statements shall be prepared by an independent certified public accountant retained at the sole cost and expense of PLAZA PARTNER. Such annual statement shall be submitted to DOT no later than 180 days after the close of each fiscal year. Copies of sale tax reports, if any, shall be submitted whenever requested by DOT. In addition, PLAZA PARTNER shall provide DOT within thirty (30) days of execution, any required tax filings with the Internal Revenue Service (such as the Form 990 and any successor form) and any required financial reports with the New York State Department of Law (such as annual report to be filed with the Charities Bureau or any successor report). Finally, no more than thirty (30) days after the end of each fiscal year which is subject to the terms and conditions of this License, PLAZA PARTNER shall provide DOT with detailed statements, to DOT's reasonable satisfaction, concerning any revenue generated from the Subconcession(s) and detailed statements, to DOT's reasonable satisfaction, concerning the expenses that PLAZA PARTNER has incurred in connection with its maintenance responsibilities under this License.

F. PLAZA PARTNER shall maintain adequate systems of internal control and shall keep complete and accurate records, books of account and data, which may be electronic records,

including electronic daily sales and receipts records, which shall show in detail the total business transacted by PLAZA PARTNER, including Revenue and Accrual Fund (if applicable). Such books and records maintained pursuant to this License shall be conveniently segregated from other business matters of PLAZA PARTNER and shall include, but not be limited to:

(1) all federal, state and local tax returns and schedules of PLAZA PARTNER;

(2) records of daily bank deposits of the entire receipts from transactions in, at, on or from the Licensed Plaza, whether maintained in hard copy or in electronic form;

(3) sales slips, daily dated cash register receipts, sales books; and

(4) duplicate bank deposit slips and bank statements, whether maintained in hard copy or in electronic form.

G. PLAZA PARTNER shall submit to DOT reports, including but not limited to the monthly Revenue, the Accrual Fund (if applicable), monthly reconciliation reports demonstrating the difference between the Revenue and the DOT-approved budgeted expenses, and operational status reports in a form acceptable to DOT, within 10 business days of the end of each quarter during the Term of the License. Notwithstanding the above, however, DOT reserves the right to reasonably request PLAZA PARTNER to submit to DOT any other reports and/or information.

H. PLAZA PARTNER shall use such accounting and internal control methods and procedures and keep such additional books and records as may be reasonably prescribed by DOT or the Comptroller, and DOT and/or the Comptroller shall have the right to examine the recordkeeping procedures of PLAZA PARTNER prior to the commencement of the term of this License, and at any time thereafter, in order to assure that the procedures are adequate to reveal the true, correct and entire business conducted by PLAZA PARTNER.

I. The failure or refusal of PLAZA PARTNER to furnish any of the statements required to be furnished under this Section within thirty (30) days after its due date, the failure or refusal of PLAZA PARTNER to maintain adequate internal controls or to keep any of the records as required by this Section after written prior notice from DOT or the Comptroller or the existence of any unexplained discrepancy in the amount of fees required to be expended hereunder, as disclosed by audit conducted by DOT or the Comptroller, the results of which are provided by written notice to PLAZA PARTNER in each instance, of more than five percent (5%) in any two (2) out of three (3) consecutive months or more than ten percent in one month, shall be presumed to be a failure to substantially comply with the terms and conditions of this License and a default hereunder, which shall entitle DOT, at its option, to terminate this License.

J. PLAZA PARTNER shall and shall require its subconcessionaire(s) to retain all books, records, and other documents relevant to this License for six (6) fiscal years after the expiration or termination of this License. City, State and federal auditors shall have full access to and the right to examine any of said materials during this period.

K. Notwithstanding anything else to the contrary contained in this License, the parties acknowledge and agree that the powers, duties and obligations of the Comptroller, pursuant to the provisions of the New York City Charter, shall not be diminished, compromised or abridged in any way.

L. This Section 10 shall survive the expiration or earlier termination of this License.

11. INSURANCE

A. PLAZA PARTNER's Obligation to Insure

(1) Upon written Notice to Proceed through the date of expiration or termination of this License, PLAZA PARTNER shall ensure that the types of insurance indicated in this Section, with the exception of Liquor Law Liability Insurance, are obtained and remain in force, and that such insurance adheres to all requirements herein. PLAZA PARTNER shall ensure that Liquor Law Liability Insurance adheres to all requirements herein and is in effect prior to the commencement of any service of alcohol and continue throughout such operations.

(2) PLAZA PARTNER is authorized to undertake or maintain operations under this License only during the effective period of all required coverage.

B. Commercial General Liability Insurance

(1) PLAZA PARTNER shall maintain Commercial General Liability insurance in the amount of at least Three Million Dollars (\$3,000,000) per occurrence for bodily injury (including death) and property damage, and One Million Dollars (\$1,000,000) for personal and advertising injury . In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the Licensed Plaza and such per-location aggregate shall be at least Five Million Dollars (\$5,000,000). This insurance shall protect the insureds from claims that may arise from any of the operations under this License. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 0001, shall contain no exclusions other than as required by law or as approved by the DOT Commissioner, and shall be "occurrence" based rather than "claims-made."

(2) Such Commercial General Liability insurance shall name the City, together with its officials and employees, as an Additional Insured for claims that may arise from any of the operations under this License. Coverage shall be at least as broad as the most recent edition of ISO Form CG 2026. "Blanket" or other forms are also acceptable if they provide the City, together with its officials and employees, with coverage at least as broad as ISO Form CG 2026.

C. Workers' Compensation, Employers Liability, and Disability Benefits Insurance

(1) PLAZA PARTNER shall maintain Workers' Compensation insurance, Employers Liability insurance, and Disability Benefits insurance on behalf of, or with regard to, all employees involved in the PLAZA PARTNER's operations under this License, and such insurance shall comply with the laws of the State of New York.

D. Commercial Automobile Liability Insurance

(1) With regard to all operations under this License, PLAZA PARTNER shall maintain or cause to be maintained Commercial Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) each accident (combined single limit) for liability arising out of the ownership, maintenance or use of any owned, non-owned or hired vehicles. Coverage shall be at least as broad as the latest edition of ISO Form CA0001.

(2) If vehicles are used for transporting hazardous materials, such Commercial Automobile Liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

E. Liquor Law Liability Insurance

(1) In the event PLAZA PARTNER shall serve alcohol, or shall permit a subconcessionaire or others to serve alcohol on the Licensed Plaza, PLAZA PARTNER shall carry or cause the subconcessionaire or others to carry liquor law liability insurance in an amount not less than Five Million Dollars (\$5,000,000) per occurrence, and name PLAZA PARTNER and the City as additional insured. Such insurance shall be effective prior to the commencement of any such service of alcohol and continue throughout such operations.

F. General Requirements for Insurance Coverage and Policies

(1) Policies of insurance required under this Section shall be provided by companies that may lawfully issue such policy and have an A.M. Best rating of at least A- / "VII" or a Standard and Poor's rating of at least A, unless prior written approval is obtained from the DOT Commissioner.

(2) Policies of insurance required under this Section shall be primary and non-contributing to any insurance or self-insurance maintained by the City.

(3) Whenever this Section requires that insurance coverage be "at least as broad" as a specified form (including all ISO forms), there is no obligation that the form itself be used, provided that PLAZA PARTNER can demonstrate that the alternative form or endorsement contained in its policy provides coverage at least as broad as the specified form.

(4) There shall be no self-insurance program with regard to any insurance required under this Section unless approved in writing by the DOT Commissioner. Under no circumstances shall the City be responsible for the payment of any self-insured retention (or any other aspect of a self-insurance program). Further, PLAZA PARTNER shall ensure that any

such self-insurance program provides the City with all rights that would be provided by traditional insurance under this Section, including but not limited the defense and indemnification obligations that insurers are required to undertake in liability policies.

(5) The City's limits of coverage for all types of insurance required under this Section shall be the greater of: (i) the minimum limits set forth in this Section or (ii) the limits provided to PLAZA PARTNER under all primary, excess and umbrella policies covering operations under this License.

(6) All required policies, except for Workers' Compensation insurance, Employers Liability insurance, and Disability Benefits insurance shall contain an endorsement requiring that the issuing insurance company endeavor to provide the City with advance written notice in the event such policy is to expire or be cancelled or terminated for any reason, and to mail such notice to both the DOT Commissioner, 55 Water Street, 9th Floor, New York, NY 10041, and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007. Such notice is to be sent at least (30) days before the expiration, cancellation or termination date, except in cases of non-payment, where at least ten (10) days written notice would be provided.

(7) All required policies, except Workers' Compensation, Employers Liability, and Disability Benefits shall include a waiver of the right of subrogation with respect to all insureds and loss payees named therein.

G. Proof of Insurance

(1) Certificates of Insurance for all insurance required in this Section must be submitted to and accepted by the DOT Commissioner prior to or upon execution of this License.

(2) For Workers' Compensation, Employers Liability Insurance, and Disability Benefits, PLAZA PARTNER shall submit one of the following:

- (a) C-105.2 Certificate of Worker's Compensation Insurance;
- (b) U-26.3 -- State Insurance Fund Certificate of Workers' Compensation Insurance;
- (c) Request for WC/DB Exemption (Form CE-200);
- (d) Equivalent or successor forms used by the New York State Workers' Compensation Board; or
- (e) Other proof of insurance in a form acceptable to the City. ACORD forms are not acceptable proof of workers' compensation coverage.

(3) For all insurance required under this Section other than Workers Compensation, Employers Liability, and Disability Benefits, PLAZA PARTNER shall submit one or more Certificates of Insurance in a form acceptable to the DOT Commissioner. All such Certificates

of Insurance shall: (i) certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (ii) be accompanied by the provision(s) or endorsement(s) in PLAZA PARTNER's policy/ies (including its general liability policy) by which the City has been made an additional insured or loss payee, as required herein. All such Certificates of Insurance shall be accompanied by either a duly executed "Certification by Insurance Broker or Agent" in the form required by the DOT Commissioner or certified copies of all policies referenced in such Certificate of Insurance.

(4) Certificates of Insurance confirming renewals of insurance shall be submitted to the DOT Commissioner prior to the expiration date of coverage of all policies required under this Concession. Such Certificates of Insurance shall comply with paragraphs (2) and (3) directly above.

(5) Acceptance or approval by the DOT Commissioner of a Certificate of Insurance or any other matter does not waive PLAZA PARTNER's obligation to ensure that insurance fully consistent with the requirements of this Section is secured and maintained, nor does it waive PLAZA PARTNER's liability for its failure to do so.

(6) PLAZA PARTNER shall be obligated to provide the City with a copy of any policy of insurance required under this Section upon request by the DOT Commissioner or the New York City Law Department.

H. Miscellaneous

(1) PLAZA PARTNER may satisfy its insurance obligations under this Section through primary policies or a combination of primary and excess/umbrella policies, so long as all policies provide the scope of coverage required herein.

(2) PLAZA PARTNER shall be solely responsible for the payment of all premiums for all policies and all deductibles to which they are subject, whether or not the City is an insured under the policy.

(3) Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Section, PLAZA PARTNER shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this License (including notice to Commercial General Liability insurance carriers for events relating to PLAZA PARTNER's own employees) no later than 20 days after such event. For any policy where the City is an Additional Insured, such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Insured as well as the Named Insured." Such notice shall also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. PLAZA PARTNER shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

(4) PLAZA PARTNER's failure to secure and maintain insurance in complete conformity with this Section, or to give the insurance carrier timely notice on behalf of the City, or to do anything else required by this Section shall constitute a material breach of this License. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

(5) Insurance coverage in the minimum amounts provided for in this Section shall not relieve PLAZA PARTNER of any liability under this License, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this License or the law.

(6) In the event of any loss, accident, claim, action, or other event that does or can give rise to a claim under any insurance policy required under this Section, PLAZA PARTNER shall at all times fully cooperate with the City with regard to such potential or actual claim.

(7) Apart from damages or losses covered by Workers' Compensation Insurance, Employers Liability Insurance, Disability Benefits Insurance, or Commercial Automobile Insurance, PLAZA PARTNER waives all rights against the City, including its officials and employees, for any damages or losses that are covered under any insurance required under this Section (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of PLAZA PARTNER and/or its employees, agents, or servants of its contractors or subcontractors.

(8) PLAZA PARTNER shall require its construction contractors that perform construction on the Licensed Plaza to maintain Commercial General Liability Insurance in accordance with Section 11(B), and such insurance shall include the City, including its officials and employees, as an additional insured with coverage at least as broad as ISO Forms CG 20 26 and CG 20 37. In the event PLAZA PARTNER requires any other entity, by contract or otherwise, to procure insurance with regard to any operations under this License and requires such entity to name PLAZA PARTNER as an additional insured under such insurance, PLAZA PARTNER shall ensure that such entity also name the City, including its officials and employees, as an additional insured(with coverage for Commercial General Liability Insurance at least as broad as ISO form CG 20 26).

(9) In the event PLAZA PARTNER receives notice, from an insurance company or other person, that any insurance policy required under this Section shall expire or be cancelled or terminated (or has expired or been cancelled or terminated) for any reason, PLAZA PARTNER shall immediately forward a copy of such notice to both the DOT Commissioner, 55 Water Street, 9th Floor, New York, NY 10041, and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, room 1005, New York, New York 10007. Notwithstanding the foregoing, PLAZA PARTNER shall ensure that there is no interruption in any of the insurance coverage required under this Section.

12. RESPONSIBILITY FOR SAFETY, INJURIES OR DAMAGE, AND INDEMNIFICATION

A. PLAZA PARTNER Responsibilities

(1) PLAZA PARTNER shall be solely responsible for the safety and protection of its employees, agents, servants, contractors, and subcontractors, and for the safety and protection of the employees, agents, or servants of its contractors or subcontractors.

(2) PLAZA PARTNER shall be solely responsible for taking all reasonable precautions to protect the persons and property of the City or others from damage, loss or injury resulting from any and all operations under this License.

(3) PLAZA PARTNER shall be solely responsible for injuries to any and all persons, including death, and damage to any and all property arising out of or related to the operations under this License, whether or not due to the negligence of the PLAZA PARTNER, including but not limited to injuries or damages resulting from the acts or omissions of any of its employees, agents, servants, contractors, subcontractors, or any other person.

(4) PLAZA PARTNER shall use the Licensed Plaza in compliance with, and shall not cause or permit the Licensed Plaza to be used in violation of, any and all federal, state or local environmental, health and/or safety-related laws, regulations, standards, decisions of the courts, permits or permit conditions, currently existing or as amended or adapted in the future which are or become applicable to the PLAZA PARTNER or the Licensed Plaza (collectively "Environmental Laws"). Except as may be agreed by the City as part of this License, PLAZA PARTNER shall not cause or permit, or allow any of the PLAZA PARTNER's personnel to cause or permit, any Hazardous Materials to be brought upon, store, used generated, treated or disposed of on the Licensed Plaza. As used herein, "Hazardous Materials" means any chemical, substance or material which is now or becomes in the future listed, defined or regulated in any manner by any Environmental Law based upon, directly or indirectly, its properties or effects.

B. Indemnification and Related Obligations

(1) To the fullest extent permitted by law, the PLAZA PARTNER shall indemnify, defend and hold the City and its officials and employees harmless against any and all claims, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, attorneys' fees and disbursements) arising out of or related to any of the operations under this License (regardless of whether or not the PLAZA PARTNER itself had been negligent) and/or the PLAZA PARTNER's failure to comply with the law or any of the requirements of this License. Insofar as the facts or law relating to any of the foregoing would preclude the City or its officials and employees from being completely indemnified by the PLAZA PARTNER, the City and its officials and employees shall be partially indemnified by the PLAZA PARTNER to the fullest extent permitted by law.

(2) PLAZA PARTNER's obligation to defend, indemnify and hold the City and its officials and employees harmless shall not be: (i) limited in any way by the PLAZA PARTNER's obligations to obtain and maintain insurance under this License, nor (ii) adversely affected by any failure on the part of the City or its officials and employees to avail themselves of the benefits of such insurance.

13. ASSIGNMENT

A. No assignment, sale, mortgage or transfer of any interest of this License by PLAZA PARTNER, in whole or in part, will be effective unless it is agreed to, in writing, by DOT and signed by the DOT Commissioner, or his/her designee, nor shall this License be transferred by operation of law, it being the purpose and spirit of this License to grant this privilege solely to PLAZA PARTNER.

B. PLAZA PARTNER shall not enter into any subcontracts where the aggregate value per annum is \$15,000 or above for the performance of its obligations, in whole or in part, under this License as referenced in Section 3 herein without DOT's prior written consent, including a favorable responsibility determination. Such approval or denial shall not be unreasonably delayed. Two (2) copies of each such proposed subcontract shall be submitted to DOT with PLAZA PARTNER's written request for approval. The PLAZA PARTNER shall ensure that the subcontractor(s) complete and file VENDEX questionnaires if the aggregate value of City contracts, franchises and concessions awarded that subcontractor, including this one, during the immediately preceding twelve-month period equals or exceeds the Threshold. All subcontracts shall contain provisions specifying:

(1) that work performed by the subcontractor must be in accordance with the terms of the License between DOT and PLAZA PARTNER;

(2) that nothing contained in such agreement shall impair the rights of DOT;

(3) that nothing contained herein, or under the License between DOT and PLAZA PARTNER, shall create any contractual relation between the subcontractor and DOT;

(4) that PLAZA PARTNER is fully responsible to DOT for the acts and omissions of the subcontractors and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by it; and

(5) (a) that the subcontractor is not in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the City, unless such default or breach has been waived in writing by the City;

(b) that the subcontractor has not been convicted of a misdemeanor related to truthfulness and/or business conduct in the past five (5) fiscal years;

(c) that the subcontractor has not been convicted of a felony in the past ten (10) fiscal years;

(d) that the subcontractor has not received formal written notice from a federal, state or local governmental agency or body that such person is currently under investigation for a felony criminal offense; and/or

(e) that the subcontractor has not received notice of default in the payment to the City of any taxes, sewer rents or water charges, which have not been paid, unless such default is currently being contested with due diligence in proceedings in court or other appropriate forum.

C. Failure of PLAZA PARTNER to obtain any required consent to any assignment shall be grounds for termination for cause, at DOT's option. If so terminated, the City shall thereupon be relieved and discharged from any further liability and obligation to PLAZA PARTNER, its assignees or transferees. In such case, all monies that may become due under the License shall be forfeited to the City, except so much thereof as may be necessary to pay PLAZA PARTNER's employees.

D. This License may be assigned by the City to any corporation, agency or instrumentality having authority to accept such assignment.

14. ALTERATIONS

A. PLAZA PARTNER shall not make, or permit the subconcessionaire(s) to make, any alterations to the Licensed Plaza without the prior written approval of DOT. "Alteration" shall have the following meaning:

(1) any restoration, rehabilitation, modification, or renovation to the Licensed Plaza;

(2) any work or construction which would or might affect in any manner, or have substantial impact upon the exterior structure, character, appearance, horticulture or design of any portion of the Licensed Plaza, including adjacent areas and Subconcession(s);

(3) any work excluding ordinary maintenance and repair, affecting the Licensed Plaza's plumbing, heating, electrical, mechanical, ventilating, or other systems;

(4) removal of perimeter planters on the Licensed Plaza;

(5) affixing or installing any equipment to the walls or any other area of the Licensed Plaza.

B. Upon installation of any such Alteration(s), title to all Alteration(s) shall vest in and thereafter belong to the City at the City's option, which may be exercised at any time after

the substantial completion of the Alteration(s). To the extent the City chooses not to exercise its option with respect to any of the Alteration(s), it shall be the responsibility of PLAZA PARTNER to remove such items after the expiration or termination of this License and restore the Licensed Plaza to its original state, normal wear and tear excepted and to the reasonable satisfaction of DOT at the sole cost and expense of PLAZA PARTNER.

C. DOT may, in its sole judgment, make additions, alterations, repairs, decorations or improvements to the Licensed Plaza at DOT's and the City's expense, but nothing contained herein shall be deemed to obligate or require DOT to make any additions, alterations, repairs, decorations, or improvements, nor shall this provision in any way affect or impair PLAZA PARTNER's obligations in any respect. DOT will coordinate with PLAZA PARTNER and provide reasonable notice to PLAZA PARTNER of any such additions, alterations, repairs, decorations or improvements. DOT will use reasonable efforts to schedule any such alteration, additions, decorations, repairs, or improvements to be made by DOT at such times as will cause the least interference with PLAZA PARTNER's operations.

15. INSPECTION AT SITE

DOT shall have the right at all times to have representatives of DOT, the City and/or the State or federal government present at the Licensed Plaza for any purpose.

16. PERSONNEL

A. The parties agree that PLAZA PARTNER is an independent contractor. It is understood and agreed that all personnel employed by PLAZA PARTNER are employees of PLAZA PARTNER and are not employees of DOT or the City, and that PLAZA PARTNER alone is responsible for their work, direction, compensation and personal conduct while engaged pursuant to this License. PLAZA PARTNER agrees that neither it nor its personnel or agents will hold themselves out as, or claim to be, officers or employees of the City of New York, or of any department, agency, or unit thereof, and that they will not, by reason hereof, make any claim, demand, or application for any right or privilege applicable to an officer or employee of the City of New York, including but not limited to worker's compensation coverage, unemployment insurance benefits, social security coverage, or employee retirement membership or credit. Nothing included in this Section or in any other provision of this License shall be construed to impose any liability or duty upon DOT or the City to the persons, firms or corporations employed or engaged by PLAZA PARTNER as employees, servants, agents, consultants, experts or independent contractors or in any other capacity whatsoever or to render DOT or the City liable to any persons, firms, corporations, associations or to any government for the acts, omissions, liabilities, obligations and/or taxes of any nature, including, but not limited to, unemployment insurance of PLAZA PARTNER or its consultants, experts, employees, servants, agents or independent contractors. Nothing in this subparagraph shall limit the indemnification provisions enumerated in Section 12.

B. PLAZA PARTNER shall not discriminate against any employee or applicant for employment because of race, creed, religion, color, sex, age, national origin, disability, marital status or sexual orientation.

17. INVESTIGATIONS CLAUSE

A. The parties to this License agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a Federal, State of New York ("State") or City governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, or license that is the subject of the investigation, audit or inquiry.

B. (1) If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, contract, or license entered into with the City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York or New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York; or

(2) If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City; then

C. (1) DOT or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

(2) If any non-governmental party to the hearing requests an adjournment, the Commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to subparagraph E below without the City incurring any penalty or damages for delay or otherwise.

D. The penalties which may attach after a final determination by the Commissioner or agency head may include but shall not exceed:

(1) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

(2) The cancellation or termination of all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this License, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, with the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

E. The Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in subparagraphs (1) and (2) below. He or she may also consider, if relevant and appropriate, the criteria established in Paragraphs (3) and (4) below in addition to any other information which may be relevant and appropriate:

(1) The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

(2) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

(3) The nexus of the testimony sought to the subject entity and its contracts, leases, permits, or licenses with the City.

(4) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under subparagraph D above, provided that the party or entity has given actual notice to the Commissioner or agency head upon the acquisition of the interest, or at the hearing called for in subparagraph C (1) above gives notice and proves that such interest previously was acquired. Under either circumstance, the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

F. Definition of Terms

(1) The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

(2) The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

(3) The term "entity" as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City or otherwise transacts business with the City.

(4) The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

G. In addition to and notwithstanding any other provisions of this License, the Commissioner or agency head may in his or her sole discretion terminate this License upon not less than three days written notice in the event PLAZA PARTNER fails promptly to report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this License by PLAZA PARTNER, or affecting the performance of this contract.

18. NOTICE

All notices from PLAZA PARTNER to DOT shall be in writing and delivered to the attention of the Director of Public Space, New York City Department of Transportation, 55 Water Street, 6th Floor, New York, NY 10041, or such other address as DOT may designate, with copies sent to DOT's General Counsel at same address. All notices from DOT to PLAZA PARTNER shall be dispatched in the same manner, and delivered to PLAZA PARTNER at 79 N. 11th Street, Brooklyn, NY 11249 or such other address as may be notified from time to time.

19. TERMINATION

A. PLAZA PARTNER shall have the right to terminate this License in whole or in part and it shall provide DOT with no less than six month written notice.

B. DOT shall have the right to terminate this License in whole or in part:

(1) Under any right to terminate as specified in any Section of this License.

(2) If DOT determines that PLAZA PARTNER or subconcessionaire(s) failed to comply with any of the terms and conditions of this License, including PLAZA PARTNER's or subconcessionaire(s)' failure to perform services at the required standards set forth in Sections 1, 3, 6, 7, 8, and 14 of this License.

(3) Upon PLAZA PARTNER or subconcessionaire(s) becoming insolvent.

(4) Upon the commencement of any proceeding under the Bankruptcy Act, by or against PLAZA PARTNER, either voluntary or involuntary.

(5) Upon DOT's determination that this License should be terminated without cause.

C. DOT shall give PLAZA PARTNER written notice of any termination of the License specifying therein the applicable provisions of subsection B of this Section and the effective date thereof, which shall not be less than twenty-five (25) days from the date of receipt of written notice by PLAZA PARTNER.

D. With regard to paragraph B(2) of this Section 19, DOT shall first give written notice to PLAZA PARTNER outlining in reasonable detail, the alleged deficiencies. If the deficiencies are not cured by PLAZA PARTNER within a reasonable time (if no time is specified), or in the time specified in DOT's notice, either of which shall in no event be less than ten (10) days except in cases of emergency (as determined by DOT), the failure to cure the deficiencies shall result in immediate termination of this License.

E. With regard to paragraph B(5) of this Section 19, DOT shall provide written notice of such termination to PLAZA PARTNER, and this License shall terminate effective twenty-five (25) days from the date such notice is received by PLAZA PARTNER.

F. PLAZA PARTNER shall be held responsible for all property belonging to DOT and the City upon termination of this License. Upon such termination PLAZA PARTNER shall quit the Licensed Plaza and surrender all City property therein in good, clean, and orderly condition, ordinary wear and tear excepted.

G. Upon termination of this License, PLAZA PARTNER shall comply with DOT close-out procedures, including but not limited to:

(1) Furnishing within thirty (30) days an inventory to DOT of all equipment, appurtenances and property purchased through or provided under this License, and carrying out any DOT directive concerning the disposition thereof.

(2) Not incurring or paying any further obligation pursuant to this License beyond the termination date. Any obligation necessarily incurred by PLAZA PARTNER on account of this License prior to receipt of notice of termination and falling due after such date shall be paid by DOT, if such obligation was required by DOT in accordance with the terms of this License. PLAZA PARTNER shall be solely responsible for any obligations that are not specifically incurred on account of this License. In no event shall the term "obligation", as used herein, be construed as including any lease agreement, oral or written, entered into between PLAZA PARTNER and its landlord.

(3) Turn over to DOT or its designees all books, records, documents and materials specifically relating to this License.

(4) Submit, within ninety (90) days, a final statement and report relating to the License. The report shall be made by a certified public accountant or a licensed public accountant.

H. Notwithstanding any other provisions of this License, PLAZA PARTNER shall not be relieved of liability to the City for damages sustained by the City by virtue of PLAZA PARTNER's breach of the License.

I. The rights and remedies of the City provided in this Section shall not be exclusive and are in addition to all other rights and remedies provided by law or under this License. In addition, nothing contained in this Section shall be deemed or imply or be construed to represent an exclusive enumeration of circumstances under which DOT may terminate this License.

20. COMPLIANCE WITH APPLICABLE STATUTES AND REGULATIONS

PLAZA PARTNER shall faithfully perform and carry out the provisions of this License and cause its subconcessionaire(s), agents, employees, and invitees to perform and carry out the provisions of this License. PLAZA PARTNER shall comply with and shall cause its subconcessionaire(s) to comply with all federal, state, and local laws, rules, regulations, and DOT specifications, standards, and policies applicable to the Licensed Plaza and PLAZA PARTNER's use and occupation thereof, including but not limited to the provisions of the New York State Labor Law regarding gratuities.

21. REPRESENTATIONS, WARRANTIES AND COVENANTS

A. PLAZA PARTNER makes the following representations and warranties:

(1) PLAZA PARTNER is a not-for-profit corporation duly organized, validly existing, and in good standing under the laws of the State of New York, and has all requisite power and authority to execute, deliver and perform this License.

(2) This License has been duly authorized by all necessary corporate action on the part of PLAZA PARTNER has been duly executed and delivered by PLAZA PARTNER, and assuming due execution and delivery by DOT, constitutes a legal, valid, binding and enforceable obligation of PLAZA PARTNER.

(3) The execution and delivery of this License, and compliance with the provisions hereof, do not and will not conflict with or constitute a violation of or default under PLAZA PARTNER's Certificate of Incorporation, by-laws, or any statute, indenture, mortgage, deed of trust or other License or instrument to which PLAZA PARTNER is bound, or, to the knowledge of PLAZA PARTNER, any order, rule or regulation of any court, governmental agency or body having jurisdiction over PLAZA PARTNER or any of its activities or properties.

(4) The PLAZA PARTNER has neither been asked to pay, offered to pay, nor paid any illegal consideration, whether monetary or otherwise, in connection with obtaining this License.

(5) PLAZA PARTNER has not employed any person to solicit or procure this License, and has not made and shall not make any payment of any commission, percentage, brokerage, contingent fee or any other compensation in connection with obtaining the License.

B. PLAZA PARTNER covenants and agrees that for so long as this License is in effect it shall maintain its corporate existence under the laws of the State of New York as a not-for-profit corporation, and shall maintain its tax-exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

C. City hereby represents and warrants that this License has been duly authorized by all necessary action on the part of the City, has been duly executed and delivered by the City and assuming due execution and delivery by PLAZA PARTNER, and registration with the Comptroller, constitutes a legal, valid, binding and enforceable obligation of the City.

22. CONFLICT OF INTEREST

PLAZA PARTNER represents and warrants that neither it nor any of its officers, trustees, employees, or volunteers has any interest, nor shall they acquire any interest directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided. PLAZA PARTNER further represents and warrants that in the performance of this License no person having such interest or possible interest shall be employed by it. No elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this License which affects his or her personal interest or the interest of any corporation, partnership or association in which he is, directly or indirectly, interested; nor shall any such person have any interest, direct or indirect, in this License or in the proceeds thereof.

23. NO LEASE

It is expressly understood that the City has title to the Licensed Plaza and that no land, building, space, or equipment is leased to PLAZA PARTNER, but that during the term of this License, PLAZA PARTNER shall be allowed the use of the Licensed Plaza only as herein provided.

24. FEDERAL EMPLOYER IDENTIFICATION NUMBER

PLAZA PARTNER represents that it is not in arrears to the City upon any debt, contract or taxes and is not a defaulter as surety or otherwise, upon any obligation to the City, and has not been declared not responsible, or disqualified, by any agency of the City, nor is there any proceeding pending relating to the responsibility or qualification of PLAZA PARTNER to

receive public contracts. The Federal Employer Identification Number of PLAZA PARTNER is 01-0849087.

25. RESERVATION OF RIGHTS AND INTERESTS

A. The parties to this License will give each other timely written notice in advance of all press conferences, public ceremonies, or other public or planned news events relating to the subject of this License.

B. Any statement or release made to the public relating to the subject of this License must be approved in advance by DOT. PLAZA PARTNER will conspicuously acknowledge the involvement of DOT in any such statement or release. If DOT finds that any release, advertisement, or statement made to the public relating to the programs and activities offered in the Licensed Plaza is incorrect or unacceptable, PLAZA PARTNER and DOT agree in good faith to make such release, advertisement or statement accurate and acceptable to both parties.

C. If PLAZA PARTNER publishes a work discussing any aspect of performance of any service covered by this License, PLAZA PARTNER will acknowledge therein the involvement, if any, of the City, when appropriate, and the City will have a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and authorize others to use such publication.

26. WAIVER OF JURY TRIAL

PLAZA PARTNER hereby expressly waives all rights to trial by jury in any lawsuit or summary proceeding hereafter instituted by the City against PLAZA PARTNER or any counterclaim or cause of action directly or indirectly arising out of the terms, covenants or conditions of this License with regard to any matter whatsoever in any way connected with this License including, but not limited to, the relationship between the City and PLAZA PARTNER. This provision relating to the waiver of jury trial rights shall survive the expiration or termination of this License or any terms hereof.

27. CHOICE OF LAW/CONSENT TO JURISDICTION AND VENUE

A. This License shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of PLAZA PARTNER and shall be governed by and construed in accordance with the internal laws of the State of New York. Any and all claims asserted by or against the City arising under this License or related hereto shall be heard and determined either in the courts of the United States ("Federal Courts") located within New York City or in the courts of the State of New York ("New York State Courts") located in the City and County of New York. To effect this License and intent, it is understood that:

(1) If the City initiates any action arising out of this License against PLAZA PARTNER in Federal Court or in New York State Court, service of process may be made on PLAZA PARTNER either by personal service upon an officer or authorized agent of PLAZA

PARTNER, wherever PLAZA PARTNER may be found, or by registered mail addressed to PLAZA PARTNER at the address set forth in this License, or to such other address as PLAZA PARTNER may provide to DOT or the City in writing; and

(2) With respect to any action arising out of this License between the City and PLAZA PARTNER in New York State Courts, PLAZA PARTNER expressly waives and relinquishes any rights it might otherwise have to move to dismiss on the ground of forum non conveniens, to remove the action to Federal Court; and to move for change of venue to a New York State Court located outside of New York County.

(3) With respect to any action arising out of this License between the City and PLAZA PARTNER in Federal Court located in New York City, PLAZA PARTNER expressly waives and relinquishes any right it might otherwise have to move for a transfer of the action to a Federal Court outside of New York City.

(4) If PLAZA PARTNER commences any action arising out of this License against the City in a court located other than in the County, City and State of New York, upon request of the City, PLAZA PARTNER shall consent to a transfer of the action to a court of competent jurisdiction located in the County, City and State of New York, or if the court where the action is commenced cannot or will not transfer the action, PLAZA PARTNER shall consent to the dismissal of such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction within New York City.

B. All disputes arising out of this License shall be interpreted and decided in accordance with the laws of the State of New York.

28. CLAIMS AND ACTIONS THEREON

A. No action at law or proceeding in equity against the City shall lie or be maintained upon any claim based upon this License or arising out of this License or in any way connected with this License unless PLAZA PARTNER shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, all as herein provided.

B. No action shall lie or be maintained against the City by PLAZA PARTNER upon any claims based upon this License unless such action shall be commenced within six months after the date of filing with the Comptroller of the certificate for the final payment hereunder, or within six months of the termination or conclusion of this License, or within six months after the accrual of the cause of action, whichever first occurs.

C. In the event any claim is made or any action brought in any way relating to the License herein, PLAZA PARTNER shall diligently render to the City without additional compensation any and all assistance which the City may require of PLAZA PARTNER.

29. CLAIM AGAINST OFFICERS OR EMPLOYEES

No claim whatsoever shall be made by PLAZA PARTNER against any officer, official, agent, employee or volunteer of the City for, or on account of, anything done or omitted in connection with this License.

30. PARTICIPATION IN AN INTERNATIONAL BOYCOTT

A. PLAZA PARTNER agrees that neither PLAZA PARTNER nor any substantially owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the Export Administration Act of 1969, as amended, or the regulations of the United States Department of Commerce promulgated thereunder.

B. Upon the final determination by the Commerce Department or any other agency of the United States as to conviction of PLAZA PARTNER or a substantially-owned affiliated company thereof, or participation in an international boycott in violation of the provisions of the Export Administration Act of 1969, as amended, or the regulations promulgated thereunder, the Comptroller may, at his option, render, forfeit and void this License.

C. PLAZA PARTNER shall comply in all respects, with the provisions of §6-114 of the Administrative Code of the City of New York and the rules and regulations issued by the Comptroller thereunder.

31. TRADEMARK

The City is the trademark owner of various marks and has licensed the use of those trademarks for use on certain designated merchandise. If PLAZA PARTNER or its subconcessionaire(s) sells merchandise that uses the City's trademarks, they shall purchase such merchandise from authorized licensees of the City of New York. The knowing sale of counterfeit or unlicensed merchandise at the Licensed Plaza will result in the immediate termination of this License.

32. INFRINGEMENTS

PLAZA PARTNER shall be liable to the City and hereby agrees to indemnify and hold the City harmless for any damage or loss or expense sustained by the City from any infringement by PLAZA PARTNER of any copyright, trademark, or patent rights of design, systems, drawings, graphs, charts, specifications or printed matter furnished or used by PLAZA PARTNER in the performance of this License.

33. ANTI-TRUST

PLAZA PARTNER hereby assigns, sells, and transfers to the City all right title and interest in and to any claims and causes of action arising under the anti-trust laws of the State of

New York or of the United States relating to the particular services purchased or procured by the City under this License.

34. EMINENT DOMAIN AND PUBLIC USE

In the event that the Licensed Plaza or any part thereof is required for a public use or condemned for a public use, whether by DOT or any other agency of government, PLAZA PARTNER waives any and all claims to an award for its License or other damage by reason of such requirement or condemnation, including but not limited to awards for fixtures and moving expenses. Notwithstanding the foregoing, DOT may, in its sole discretion and upon PLAZA PARTNER's request, use reasonable efforts to provide PLAZA PARTNER with a new location if relocation is feasible, or, alternatively, the License term may be tolled for the period of time during which the public work being performed causes an interruption to PLAZA PARTNER's business. In such case, the License term shall begin to run again as soon as the public work is completed and PLAZA PARTNER is able to resume its business.

35. DEVELOPMENT PURPOSES

In the event that the Licensed Plaza or any part thereof is required by DOT or any other agency of government for development purposes, construction, repairs or other work, PLAZA PARTNER waives any and all claims to an award under this License or other damages by reason of such requirement or work, including but not limited to awards for fixtures. PLAZA PARTNER also agrees that this License shall terminate with regard to the affected area(s) and PLAZA PARTNER shall vacate the affected area(s) upon twenty-five (25) days' written notice from DOT.

36. SEVERABILITY

If any provision(s) of this License is held unenforceable for any reason, each and all other provision(s) shall nevertheless remain in full force and effect.

37. ALL LEGAL PROVISIONS DEEMED INCLUDED

It is the intent and understanding of the parties to this License that each and every provision of law required to be inserted in the License shall be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this License shall forthwith upon the application of either party be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party hereunder.

38. MODIFICATION

No waiver or modification of any provision of this License will be effective unless it is in writing and signed by duly authorized representatives of DOT and PLAZA PARTNER.

39. ENTIRE AGREEMENT

This License contains all the terms and conditions agreed upon by the parties hereto and no other agreement, oral or otherwise, regarding the subject matter of this License shall be deemed to exist or to bind any of the parties hereto or to vary any of the terms contained herein.

40. COUNTERPARTS

This License may be executed in one or more counterparts which, when taken together, shall constitute one and the same.

NO FURTHER TEXT ON THIS PAGE

Agreed to this ____ day of _____, 20__:

By:_____

Polly Trottenberg
Commissioner
New York City Department of Transportation

Dated:

By:_____

Adam D. Perlmutter
Chairperson, Board of Directors
Open Space Alliance for North Brooklyn, Inc.

Dated:

Approved as to Form and Certified as to Legal Authority:

Acting Corporation Counsel

STATE OF NEW YORK)

ss:

COUNTY OF NEW YORK)

On this day of , 20__ before me personally came Michelle Craven to me known, and known to be the Senior Executive Director of Cityscape & Franchises at the Department of Transportation of the City of New York, and the said person described in and who executed the forgoing instrument and she acknowledged that she executed the same in her official capacity and for the purpose mentioned therein.

Notary Public

STATE OF NEW YORK)

ss:

COUNTY OF NEW YORK)

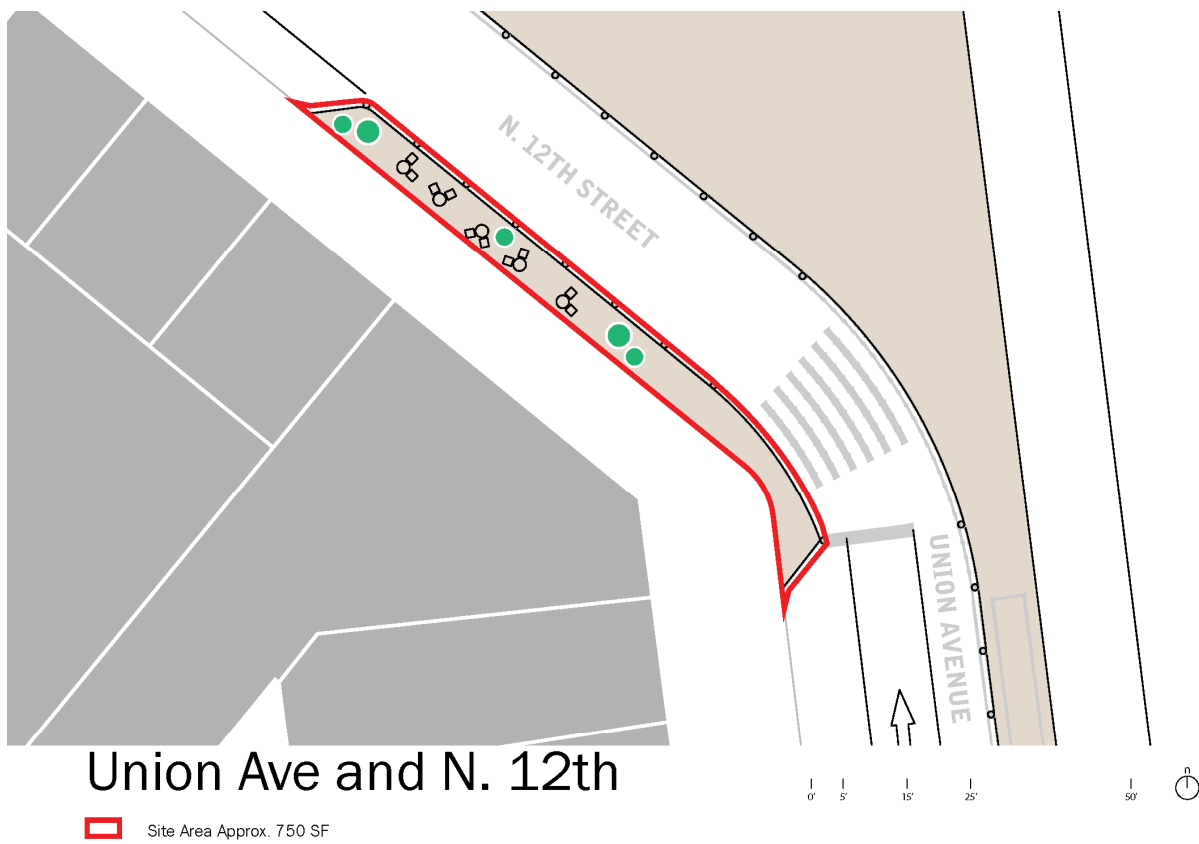
On this day of , 20__ before me personally came Adam D. Perlmutter, who, being duly sworn by me did depose and say that he is the Chairperson of the PLAZA PARTNER, the corporation described in and who executed the foregoing instrument and s/he acknowledged that s/he executed the same in his/her official capacity and for the purposes mentioned therein.

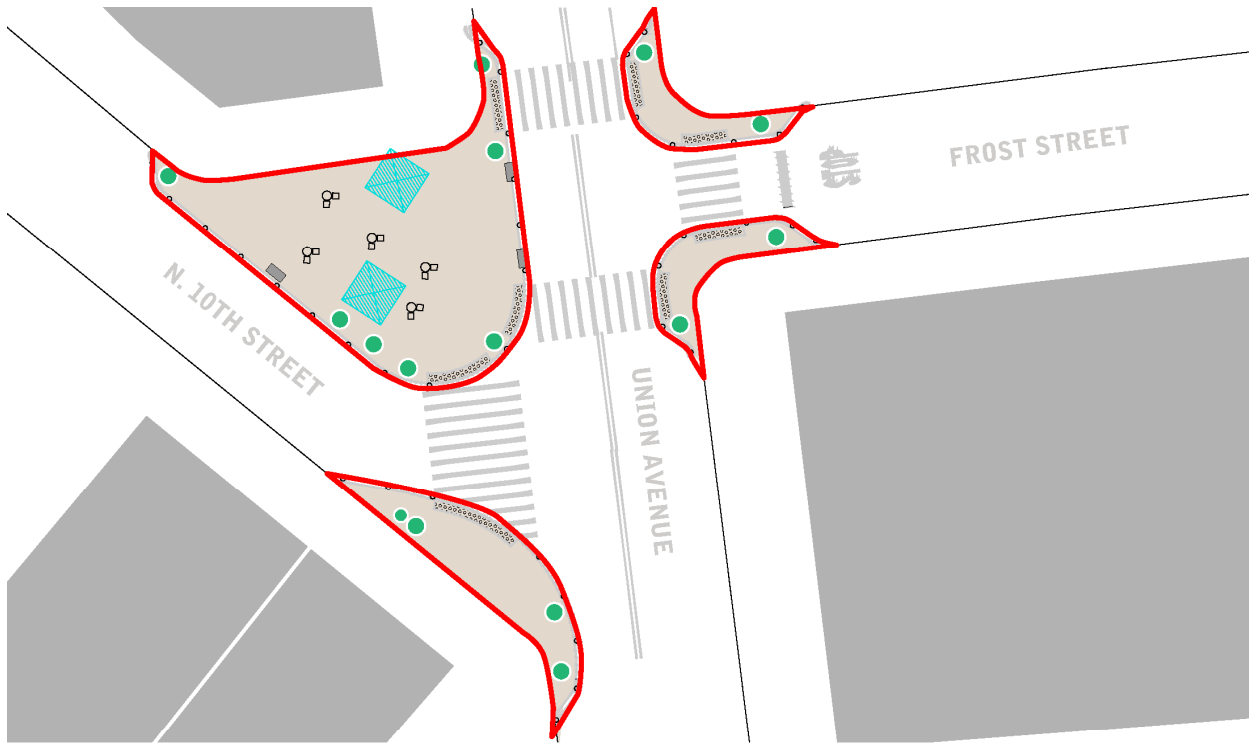
Notary Public

Exhibit A

Map of Licensed Plaza

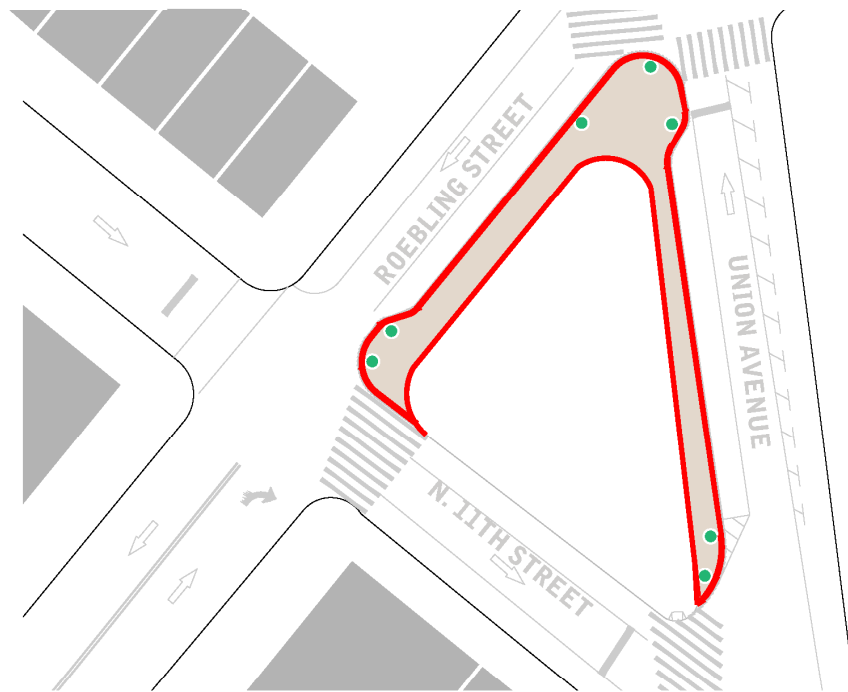
Total Area: 7,475 square feet





Union Ave and N. 10th

Site Area Approx. 4,125 SF



Union Ave and N. 11th

Site Area Approx. 2,600 SF

Exhibit B

List of Amenities (all quantities listed below are approximations)

- Movable tables (8)
- Movable chairs (21)
- Umbrellas (2)
- Large Planters (23)
- Small Planters (4)
- Granite Blocks (3)

SCHEDULE A

Plaza Concession Fees for Commercial/Promotional Events

Commercial Event Size	Small	Medium	Large
Concession Fee per Event Day	\$937	\$3,750	\$7,500